



2025:DHC:11674



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

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Date of decision: 20.12.2025+ **FAO 407/2016 & CM APPLs. 30319/2017, 33949/2018, 50942/2022
& 52182/2022****M/S KHUBI RAM RAJIV KUMAR & CO****THR PARTNER RAM AVTAR BANSAL****.....Appellant****Through: Ms. Prem Lata Bansal, Sr. Advocate
with Mr. Paras Chaudhary and
Mr. Shivang Bansal, Advocates****versus****M/S NAVEEN ENTERPRISES & ORS****.....Respondents****Through: None.****CORAM:****HON'BLE MS. JUSTICE CHANDRASEKHARAN SUDHA****JUDGMENT (ORAL)****CHANDRASEKHARAN SUDHA, J.**

1. The present appeal under Section 37(b) of the Arbitration and Conciliation Act, 1996 (the A&C Act) has been filed by the petitioner in Suit No. 134/2014 on the file of the Additional District and Session's Judge-03, Tis Hazari Courts, Delhi (the trial court), aggrieved by the Order dated 31.03.2016, by which their petition under Section 34 of the A&C Act, assailing the Arbitration



Award dated 31.03.2014 (the Award), was dismissed.

2. The parties herein shall be referred to in the same rank and capacity as they were arrayed in Suit No. 134/2014.

3. Brief facts emerging from the record reads thus: The petitioner is a registered partnership firm engaged in the business of commission agency (*Aadhatiya*) in cloth and fabrics and is a *bonafide* member of the Delhi Hindustani Mercantile Association. The petitioner was carrying on business with the respondents for several years, during which period the latter purchased cloth and fabrics from the former on credit basis in the course of regular commercial transactions.

3.1. It is the case of the petitioner that a running account was maintained in its books in respect of the transactions with the respondents. According to the petitioner, an amount of ₹1,92,483.46 was outstanding against the respondents as on 01.04.2011. In support of the claim, the petitioner relied upon invoices/*bijaks*, statements of account and transport records. The



petitioner asserted that the terms and conditions governing the transactions, including the arbitration clause and the clause relating to levy of interest, were printed on the reverse of the bills issued to the respondents and were binding upon them. It was further pleaded that despite repeated oral demands, the respondents failed to clear the outstanding dues. The petitioner thereafter issued a letter dated 03.03.2012 followed by a legal notice dated 12.03.2012 calling upon the respondents to discharge their liability. Upon failure of the respondents to comply with the said demands, the petitioner invoked the arbitration clause under the rules of the Delhi Hindustani Mercantile Association seeking recovery of the outstanding amount along with interest and costs.

3.2. During the arbitral proceedings, the respondents did not enter appearance despite service of notice and hence were proceeded *ex-parte*.

3.3. The learned Arbitrator framed issues, *inter alia*, with respect to the existence of an arbitration agreement and the



entitlement of the petitioner to recover the claimed amount with interest. While holding that a valid arbitration agreement existed between the parties, the learned Arbitrator, upon examination of the statement of accounts and other documentary material produced by the petitioner, dismissed the claim *vide* Award dated 31.03.2014.

3.4. Aggrieved by the Award, the petitioner filed objections under Section 34 of the A&C Act contending that the Award was contrary to law and public policy and that the Arbitrator had failed to consider the contractual terms, usage of trade and documentary evidence on record, thereby acting in violation of Section 28(3) of the A&C Act.

3.5. The District Court, *vide* the impugned Order, dismissed the objections holding that the grounds urged by the petitioner essentially sought re-appreciation of evidence and re-examination of factual findings returned by the learned Arbitrator, which was impermissible within the limited scope of interference under



Section 34 of the A&C Act. The Court further held that an erroneous interpretation of contractual terms or an alleged incorrect appreciation of evidence did not constitute patent illegality or conflict with the public policy of India and that the Award represented a plausible view based on the materials on record, warranting no interference.

4. Aggrieved, the petitioner has come up in appeal.

5. This Court *vide* order dated 07.04.2025 directed the matter to be proceeded *ex-parte* as the Respondents failed to appear despite sufficient opportunities being granted.

6. It is submitted by the learned Senior counsel for the appellant/petitioner that the Award as well as the impugned Order are vitiated by patent illegality and contravene the mandate of Section 28(3) of the A&C Act, 1996, inasmuch as the learned Arbitrator failed to enforce the contractual terms agreed between the parties. Reliance was placed on the dictum in **Foong v. Saw Pipes Ltd., (2003) 5 SCC 705: 2003 SCC OnLine SC 545,**



wherein it was held that it is the primary duty of the arbitrator to enforce the contract between the parties and that an award passed in contravention of the terms of the contract is violative of Section 28(3) of the A&C Act and liable to be set aside. The learned Senior counsel submitted that in the case on hand, the invoices/*bijaks* issued by the petitioner clearly contained printed terms relating to levy of interest in the event of delayed payment, in addition to the arbitration clause. Having held that the arbitration clause printed on the invoices constituted a valid arbitration agreement, the learned Arbitrator could not have selectively disregarded the remaining contractual stipulations forming part of the same document.

6.1. It is further submitted that the finding of the learned Arbitrator that the claim was essentially one for interest and interest upon interest is contrary to the record and ignores settled principles governing commercial transactions. It is argued that the claim was fundamentally for recovery of outstanding amounts



under unpaid invoices and that interest was claimed as a contractual and compensatory consequence of delayed payment. In this regard, reliance was placed on **Irrigation Deptt., Govt. of Orissa v. G.C. Roy, (1992) 1 SCC 508: 1991 SCC OnLine SC 342**, wherein the Apex Court recognised that a party deprived of the use of money to which it is legitimately entitled has a right to be compensated for such deprivation, and that interest is a normal accretion in commercial dealings unless expressly prohibited by contract.

6.3. It is further urged by the learned Senior counsel that even assuming, for argument sake, that the contract was silent on certain aspects of interest calculation, the learned Arbitrator was not justified in rejecting the claim outrightly, particularly when the respondents had been proceeded *ex-parte* and had not rebutted the documentary evidence led by the petitioner. The Arbitrator failed to appreciate the statement of accounts, sundry debtors list and transport records, which cumulatively established the subsisting



liability of the respondents and such non-consideration of material evidence renders the Award perverse and arbitrary, goes the argument.

6.4. It is further contended that the District Court erred in declining interference by mechanically characterising the objections as an attempt at re-appreciation of evidence. It was submitted that the objections squarely fell within the permissible grounds under Section 34(2) of the A&C Act, as explained by the Apex Court in **DDA v. R.S. Sharma and Co., (2008) 13 SCC 80 : 2008 SCC OnLine SC 1298**, which holds that an award can be set aside if it is contrary to substantive law, the provisions of the A&C Act, or the terms of the contract, or if it is patently illegal or shocks the conscience of the court. However, in the present case, the Court failed to examine whether the Award was in conflict with the fundamental policy of Indian law or suffered from patent illegality arising from disregard of contractual terms and trade usage.



7. Heard the appellant/petitioner and perused the records.

8. On perusal of records, it emerges that the existence of commercial transactions between the parties, evidenced by invoices/*bijaks* issued by the petitioner and the maintenance of a running account, is not in dispute. The major dispute between the parties centres around the petitioner's entitlement to interest on delayed payments in terms of the conditions printed on the said invoices.

9. Therefore, the principal issue that falls before this court for consideration is whether the learned Arbitrator as well as the District Court was justified in rejecting the petitioner's claim for interest, despite the existence of a contractual stipulation relating thereto and statutory framework governing award of interest under the A&C Act.

10. At the outset, it is apposite to refer to Clause 2 of the 'Note' printed on the back side of the invoice/*bijak* governing the transactions between the parties, which reads as thus:



“2. ब्याज दर 1.75 रू० सेकडा लिया जायेगा।”

(**Translation:** “Interest at the rate of 1.75 per hundred shall be charged.”)

10.1. The aforesaid clause clearly records an agreement between the parties for levy of interest rate @1.75 per hundred. In trade language, particularly in *Adhathiya* (middlemen/brokerage) transactions, the said expression denotes interest @1.75% per month. The petitioner’s claim of interest @21% per annum is only an annualised expression of the said agreed monthly rate.

11. It is pertinent to note that, once invoices are accepted as binding contractual documents, the terms and conditions printed thereon, including the clause relating to the levy of interest cannot be selectively ignored. Therefore, the learned Arbitrator, having held that there is a valid arbitration agreement between the parties on the basis of the clauses printed on the invoices/*bijaks*, erred in disregarding Clause 2 thereof, while adjudicating the claim for interest. This approach of the learned Arbitrator is contrary to Section 28(3) of the A&C Act which reads thus:



“28.Rules applicable to substance of dispute.—

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(3) While deciding and making an award, the arbitral tribunal shall, in all cases, take into account the terms of the contract and trade usages applicable to the transaction.”

11.1. The learned Arbitrator erred in appreciating the terms of the agreement between the parties while holding that the petitioner had essentially filed the claim only for recovery of unlimited and unjustified interest under the garb of outstanding bill amounts, despite the interest clause printed on the bills and the course of dealings between the parties. The reasoning of the learned Arbitrator that the interest clause did not specify the basis or manner of levy of interest cannot be sustained. The rate of interest was contractually stipulated, and the manner of its application flows from established trade usage. The rejection of interest on the ground of alleged ambiguity is, therefore, unsustainable. As held by the Apex Court in the dictum of **ONGC** (*supra*), the primary duty of the Arbitral Tribunal is to enforce the



contract between the parties, and an award rendered in disregard of the contractual terms is patently illegal and opposed to public policy.

12. Even otherwise, Section 31(7)(a) of the A&C Act confers the power upon the Arbitral Tribunal to award interest for the period between the date on which the cause of action arose and the date of award, unless otherwise agreed by the parties. Section 31(7) of the A&C Act reads thus:

“31. Form and contents of arbitral award.—

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(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).”

12.1. In Interstate Construction v. National Projects Construction Corporation Ltd: 2025 KHC 6492: 2025 SCC OnLine SC 1127, it has been held the power of the arbitrator to grant pre-reference interest, *pendente lite* interest, and post award interest under Section 31(7) of the A&C Act is fairly well - settled. This provision has two parts. Under clause (a), the arbitrator can award interest for the period between the date of cause of action to the date of the award, “*unless otherwise agreed by the parties*”. Clause (b) provides that unless the award directs otherwise, the sum directed to be paid by an arbitral award shall carry interest @ 2% higher than the current rate of interest, from the date of the award to the date of payment (referring to the post 23.10.2015 position).

12.2. The wordings of Section 31(7) (a) of the A&C Act



marks a departure from the A&C Act in two ways: *first*, it does not make an explicit distinction between pre-reference and *pendente lite* interest as both of them are provided for under this sub-section; *second*, it sanctifies party autonomy and restricts the power to grant pre-reference and *pendente lite* interest, the moment the agreement bars payment of interest, even if it is not a specific bar against the arbitrator. The power of the arbitrator to award pre-reference and *pendente lite* interest is not restricted when the agreement is silent on whether interest can be awarded or does not contain a specific term that prohibits the same. While *pendente lite* interest is a matter of procedural law, pre-reference interest is governed by substantive law. Therefore, the grant of pre-reference interest cannot be sourced solely in Section 31(7) (a) of the A&C Act (which is a procedural law), but must be based on an agreement between the parties (express or implied), statutory provision (such as Section 3 of the Interest Act, 1978), or proof of mercantile usage.



12.3. It was further held that, from a minute reading of sub-section (7), it can be seen that it has got two parts: the *first part* i.e., clause (a) deals with passing of award, which would include interest up to the date on which the award is made. The *second part* i.e., clause (b) deals with grant of interest on the 'sum' awarded by the arbitral tribunal. Hence, under Section 31(7) of the A&C Act, an arbitral tribunal has the power to grant-- (i) pre-award; (ii) *pendente lite*; and (iii) post-award interest. The Apex Court also explained the reason for award of such interest as - the intention behind awarding pre-award interest is primarily to compensate the claimant for the pecuniary loss suffered from the time the cause of action arose till passing of the arbitral award. Further, this is also to ensure that the arbitral proceedings is concluded within a reasonable period to minimise the impact of the pre-award interest as well as interest *pendente lite*; thereby ensuring that the debtor does not delay payment of the arbitral amount to the award holder promoting efficiency in the arbitration



process. Similarly, the grant of post-award interest also serves a salutary purpose. It primarily acts as a disincentive to the award debtor not to delay payment of the arbitral amount to the award holder.

12.4. It has been further held that the sum awarded would mean the principal amount plus the interest awarded from the date of cause of action up to the date of the award. The sum awarded in Section 31(7) (a) of the A&C Act would mean principal amount plus the interest awarded. Thereafter, as per Section 31(7) (b) of the A&C Act, the sum (principal amount + interest) would carry further interest @ of 2 % higher than the current rate of interest prevalent on the date of the award to the date of payment.

13. Coming to the case on hand, Clause 2 of the Note expressly permits levy of interest. Thus, this is not a case where the tribunal was required to infer power to grant interest in the absence of an agreement; rather, there existed a clear contractual stipulation authorising levy of interest. The learned Arbitrator,



therefore, committed a manifest error in declining interest despite the existence of such an agreement. As held in **Irrigation Deptt., Govt. of Orissa** (*supra*) as well as in **Interstate Construction** (*supra*), a party deprived of the use of money to which it is legitimately entitled must ordinarily be compensated for such deprivation, and that interest is a normal accretion in commercial transactions, squarely applies to cases where the contract itself provides for payment of interest.

14. The District Court, while dismissing the objections raised by the appellant/petitioner under Section 34 of the A&C Act, failed to appreciate the statutory position and erroneously proceeded on the premise that the challenge raised by the petitioner amounted to mere re-appreciation of the evidence. Hence, this court is of the view that the Arbitral Award, insofar as it rejects the claim for interest, cannot be sustained.

15. Accordingly, the appeal is allowed.

16. The impugned judgement dated 31.03.2016 and the



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Arbitral Award dated 31.03.2014 are set aside to the extent they reject the petitioner's claim for interest. The petitioner shall be entitled to interest in terms of Clause 2 of the Note printed on the invoices, i.e., @ of 1.75% per month (equivalent to 21% per annum, simple interest) on the outstanding principal amount of ₹1,92,483.46, from the date the amount became due, i.e., 01.04.2011 till the date of the arbitral award, i.e., 31.03.2014 and thereafter @ of 18% per annum till realisation.

17. The appeal stands disposed of in the above terms. Applications, if any, pending, shall stand closed.

**CHANDRASEKHARAN SUDHA
(JUDGE)**

**DECEMBER 20, 2025
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