



2026:DHC:2418-DB



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

+ **FAO(OS) (COMM) 18/2026**

MS SHARMA ENTERPRISESAppellant

Through: Ms. Anusuya Salwan, Adv.

versus

**NATIONAL BUILDING
CONSTRUCTION CORPORATION**Respondent

Through: Ms. Shilpi Chowdhary and Mr.
Amarkant Patel, Advs.

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

HON'BLE MR. JUSTICE OM PRAKASH SHUKLA

JUDGMENT (ORAL)

% **20.03.2026**

C. HARI SHANKAR, J.

1. Arbitral proceedings between the appellant and the respondent culminated in the passing of an award dated 28 July 2016 by a learned Sole Arbitrator. The learned Arbitrator awarded, in favour of the appellant and against the respondent, an amount of ₹ 53,28,098/- alongwith pre-reference and *pendente lite* interest at the rate of 10% per annum.

2. A learned Single Judge, before whom the respondent assailed the award under Section 34 of the Arbitration and Conciliation Act, 1996, refused to interfere with the award except to the extent it granted pre-reference and *pendente lite* interest in favour of the appellant.

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3. Aggrieved by the setting aside of the arbitral award to the extent of grant of pre-reference and *pendente lite* interest, the appellant has now filed the present intra-court appeal.

4. We have heard Ms. Salwan, learned Counsel for the appellant and Ms. Shilpi Chowdhary, learned Counsel for the respondent at some length.

5. On the aspect of interest, the decision of the learned Arbitrator is contained in paras 101 and 102 of the arbitral award, which read thus:

“101. CLAIM NO.7: INTEREST

The Claimant has claimed interest @ 24% p.a. on the amounts found due to it from the Respondent. It is stated that the Respondent has been charging interest @ 18% p.a. on the Mobilization advance and as such the Claimant should also be awarded at least interest @ 18% on the amounts, which were illegally withheld by the Respondent after terminating its Contract.

102. Upon consideration of the submissions made by Learned Counsel for the Parties, and considering overall facts and circumstances of the case, interest @10% p.a. is awarded to the Claimant on the amounts held payable to the Claimant except on costs of Rs. 5 lacs from 22.09.1992, the date of the termination of the Contract, till payment thereof to the Claimant. It would take care of pre-litigation, pendente lite as well as future interest”

6. The entitlement of the appellant to interest was questioned by the respondent, before the learned Single Judge, on the basis of Clause 26 of the Contract between the parties, which read thus:

“26. The sub-contractor shall be paid monthly running bill for the quantity already executed upto the end of previous month



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subject to the approval of quantity measured unless otherwise specified. The amount so payable in the estimated value of works shall be paid upto date, less the amount already paid. If the monthly interim payment which become payable is not paid due to any reason, then 75% of the works executed and measured shall be paid to the sub-contractor as advance on written request The payment to the sub-contractor will be released within seven days of NBCC receiving its payment from the clients i.e. CIDCO/ IRCON.

No claim for interest will be entertained by the corporation in respect of any balance payments or any deposit which may be held up with the corporation due to any dispute between the Corporation and sub-contractor or in respect of any delay on the part of the corporation in making monthly or final payments or otherwise.”

(Emphasis supplied)

7. Before the learned Single Judge, the appellant placed reliance on para 25 of a judgment of the Supreme Court in ***Oil and Natural Gas Corporation Ltd v. G & T Beckfield Drilling Services Pvt. Ltd.***¹, which read:

“25. On a careful analysis of the decisions discussed above, we are of the view that arbitral tribunal can be denuded of its power to award pendente lite interest only if the agreement/ contract between the parties is so worded that the award of pendente lite interest is either explicitly or by necessary implication (such as in the case of ***Sayeed & Co. (supra)***² and ***THDC First (supra)***³ barred. A clause merely barring award of interest on delayed payment by itself will not be readily inferred as a bar to award pendente-lite interest by the arbitral tribunal.”

8. As is apparent from a reading of the judgment in ***ONGC***, the Supreme Court, in that case, distinguished the clause relating to payment of interest, as was applicable therein, with the clause which applied in the earlier decision of the Supreme Court in ***Sayeed Ahmed***. We may, therefore, reproduce these clauses as under:

¹ 2025 SCC OnLine SC 1888

² Sayeed Ahmed & Co. v. State of U.P., (2009) 12 SCC 26

³ Tehri Hydro Development Corpn. Ltd. v. Jai Prakash Associates Ltd., (2012) 12 SCC 10



Applicable Clause in **ONGC**

18.1 ...Should corporation question any item or items of an invoice, it may withhold payment of the amount in dispute until such matter is resolved between the parties, but the amount not in dispute is to be paid within above period. *No interest shall be payable by ONGC on any delayed payment /disputed claim.*

(Emphasis supplied)

Applicable Clause in **Sayed Ahmed**

“G. I.09. No claim for interest or damages will be entertained by the Government with respect to any money or balance which may be lying with the Government or any becoming due owing to any dispute, difference or misunderstanding between the Engineer-in-Charge on the one hand and the contractor on the other hand or with respect to any delay on the part of the Engineer-in-Charge in making periodical or final payment *or any other respect whatsoever.*”

(Emphasis supplied)

9. Dealing with the entitlement of the correctness of the award of interest in **Sayed Ahmed, the Supreme Court held thus:**

“15. Clause G 1.09 makes it clear that no interest or damages will be paid by the government, in regard to:

- (i) any money or balance which may be lying with the Government;
- (ii) any money which may become due owing to any dispute, difference or misunderstanding between the Engineer-in-Charge on the one hand and the contractor on the other hand;
- (iii) any delay on the part of the Engineer-in- Charge in making periodical or final payment; or
- (iv) any other respect whatsoever. *The clause is comprehensive and bars interest under any head in clear and categorical terms.*



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16. In view of clause (a) of sub-section (7) of Section 31 of the Act, it is clear that the Arbitrator could not have awarded interest up to the date of the award, as the agreement between the parties barred payment of interest. The bar against award of interest would operate not only during the pre- reference period, that is, up to 13.3.1997 but also during the pendente lite, that is, from 14.3.1997 to 31.7.2001.”

(Emphasis supplied)

10. The learned Single Judge has distinguished the provisions relating to entitlement of the contractor to interest as contained in *ONGC* and in *Sayeed Ahmed* and has come to a finding that the applicable clause in the present case was akin to the clause which applied in *Sayeed Ahmed* and was distinct from the clause which applied in *ONGC*. The impugned judgment holds that, while, in *ONGC*, the proscription against grant of interest was “on any delayed payment/disputed claim”, in *Sayeed Ahmed*, the proscription applied to also included payment of interest “in any other respect whatsoever”. The Supreme Court, in *Sayeed Ahmed*, has specifically observed that the proscription on grant of interest “in any other respect whatsoever” was “comprehensive and bars interest under any head in clear and categorical terms”. These are the words of the Supreme Court in *Syed Ahmed* and not the words of the payment of interest clause.

11. As such, it is clear that, in *Sayeed Ahmed*, the Supreme Court understood and interpreted the proscription on payment of interest in any other respect whatsoever as being an absolute bar to grant of interest.

12. On that basis, the Supreme Court held that the arbitrator, in *Sayeed Ahmed*, was in error in awarding interest.



13. As we have already noted, in *ONGC*, the clause did not contain a residual proscription to payment of interest for any other reason whatsoever. The bar was against the payment of interest “on any delayed payment / disputed claim”. There was no further residual clause against the payment of interest. Clearly, therefore, this was the basis on which the Supreme Court in *ONGC* distinguished the clause relating to payment of interest as available before it with the clause which applied in *Sayeed Ahmed*.

14. In the present case, Clause 26, which we have already extracted in para 6 *supra*, states that interest would not be payable by the respondent for any delay “in making monthly or final payments *or otherwise*”. The learned Single Judge has noted that the use of the words “or otherwise” likened Clause 26 of the contract between the appellant and the respondent to the clause which was the subject matter of consideration before the Supreme Court in *Sayeed Ahmed*.

15. Effectively, therefore, what the learned Single Judge has held is that the words “or otherwise” should be treated as akin to the words “or in any other respect whatsoever”.

16. Accordingly, the learned Single Judge has treated the present case as covered by the decision in *Sayeed Ahmed*, as opposed to the decision in *ONGC*.

17. Ms. Salwan has sought to submit that the words “or otherwise” as contained in Clause 26 have not been correctly understood by the



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learned Single Judge and that they have to take colour from the words which precede the said clause, which referred to delay in making final or monthly payments.

18. At the highest, this plea may be regarded only as arguable. There is no inherent fallacy in view of the learned Single Judge in treating the words “or otherwise” as akin to the words “or in any other respect whatsoever”.

19. The scope of appeal under Section 37 of the 1996 Act is limited. We may refer, in this context, to the following paras from the decision of the Supreme Court in *Somdatt Builders-NCC-NEC (JV) v. NHAI*⁴:

“48. In *Reliance Infrastructure Ltd. v. State of Goa*⁵, this Court referring to one of its earlier decisions in *UHL Power Co. Ltd. v. State of H.P.*⁶, held that scope of interference under Section 37 is all the more circumscribed keeping in view the limited scope of interference with an arbitral award under Section 34 of the 1996 Act. As it is, the jurisdiction conferred on courts under Section 34 of the 1996 Act is fairly narrow. Therefore, when it comes to scope of an appeal under Section 37 of the 1996 Act, jurisdiction of the appellate court in examining an order passed under Section 34, either setting aside or refusing to set aside an arbitral award, is all the more circumscribed.

49. Again in *Larsen Air Conditioning & Refrigeration Co. v. Union of India*⁷, this Court reiterated the position that Section 37 of the 1996 Act grants narrower scope to the appellate court to review the findings in an arbitral award if it has been upheld or substantially upheld under Section 34.

⁴ (2025) 6 SCC 757

⁵ (2024) 1 SCC 479

⁶ (2022) 4 SCC 116

⁷ (2023) 15 SCC 472



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51. As already discussed above, the Arbitral Tribunal had interpreted Clause 51 in a reasonable manner based on the evidence on record. This interpretation was affirmed by the learned Single Judge exercising jurisdiction under Section 34 of the 1996 Act. Therefore, the Division Bench of the High Court was not at all justified in setting aside the arbitral award exercising extremely limited jurisdiction under Section 37 of the 1996 Act by merely using expressions like “opposed to the public policy of India”, “patent illegality” and “shocking the conscience of the court.”

20. The Court, therefore, in Section 37, cannot interfere with the decision of the Section 34 court merely on the ground that there can be another possible interpretation of the contract, even if the Court feels that that would be a better interpretation. Unless we find that the learned Single Judge has erred in applying Section 34 of the 1996 Act, we would be loath to interfere.

21. For the reasons already stated earlier, we do not find that the learned Single Judge has erred in appreciating the issue before him or in likening the present case to the decision in *Sayeed Ahmed*, instead of the decision in *ONGC*.

22. Ms. Salwan also placed reliance on the judgment of the Supreme Court in *Ferro Concrete Construction (India) Pvt. Ltd. v. State of Rajasthan*⁸. In that case, the Supreme Court had held interest to be payable. The said decision, in our view, would not come to the aid of the appellant, as the clause in *Ferro Concrete* again was one which did not contain any residual clause of the nature of “or otherwise” or “in any other respect whatsoever”. The clause under consideration before the Supreme Court in *Ferro Concrete* reads thus:



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“22. Payments:—

(i) Payments will be made to the contractor within one month of the issuing of the corresponding bills. The contractor shall comply with the procedure that may be prescribed for all operations from the recording of progress measurements upto payment of bills.

(ii) All materials and work for which payment is made in part or full shall become the sole property of the Govt, but this provision shall not relieve the contractor of his responsibility for the care and protection of the materials and works at his own cost nor his liability to make good the damage if any unless and until the whole work has been deemed to have been completed and handed over to the Government.

The contractor shall not be entitled to claim any interest upon any payment, any arrears or upon any balance, which may be found due to him at any time.”

(Emphasis supplied)

In that view of the matter, we do not feel that the decision in ***Ferro Concrete*** can constitute a basis for us to interfere with the judgment of the learned Single Judge.

23. We, therefore, do not see any reason to interfere with the judgment under challenge in the present case.

24. The appeal is accordingly dismissed with no orders as to costs.

C. HARI SHANKAR, J

OM PRAKASH SHUKLA, J

MARCH 20, 2026

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