



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

% **Judgment reserved on: 21 July 2023**
Judgment pronounced on: 01 August 2023

+ **FAO(OS) (COMM) 175/2021**

**NATIONAL PROJECTS CONSTRUCTIONS
CORPORATION LTD**

..... Appellant

Through: Mr. Dhruv Mehta, Sr. Adv. Mr.
Rajat Arora, Mr. Shyam
Agarwal and Ms. Mariya
Shahab, Advs.

versus

M/S INTERSTATE CONSTRUCTION Respondent

Through: Mr. M. Lall, Mr. Rahul Yadav
and Mr. Rajat Sharma, Advs.
for R-1.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

YASHWANT VARMA, J.

1. The present appeal under Section 37 of the **Arbitration and Conciliation Act, 1996**¹ impugns the judgment dated 02 August 2021 rendered by a learned Single Judge on the petition under Section 34 of the Act preferred by the appellant. The appellant also seeks partial setting aside of the impugned Award dated 28 October 2020. However, Mr. Mehta learned senior counsel appearing in support of

¹ the Act



the appeal clarified that the challenge stands restricted to the directions framed by the **Arbitral Tribunal**² insofar as the issue of interest is concerned.

2. In order to appreciate the nature of the challenge which stands raised, Mr. Mehta drew our attention to the following operative directions as framed by the AT while considering the issue of interest:-

“58.

In nutshell the Claimant is held entitled to interest as under: -

a) Pre-reference / past period interest:

@ 18% per annum on a sum of Rs. 34,43,490.61 w.e.f. July 1987 up till 19.01.1998.

b) Pendente-lite interest:

i) @ 12% per annum w.e.f. 20.01.1998 up till 31.12.2008 on the total amount (i.e. principal amount and the amount of interest of the pre-reference/past period).

ii) @ 12% per annum w.e.f. 01.01.2017 till the date of award on the total amount (i.e. principal amount + amount of interest of the pre-reference/past period)

c) Future interest

@ 18% per annum from the date of the award till the date of payment on the total amount (i.e. principal amount + amount of interest of the pre-reference/past period).”

3. The challenge, Mr. Mehta explained, is not with respect to either the rate at which interest has been awarded nor does it extend to the award of interest for the pre-reference/past period. The grievance of the appellant appears to essentially stem from the directions as

² AT



contained in sub-paragraph (b) (i) of Para 58 and to the extent of the AT stipulating that interest for the period aforesaid would be leviable not merely on the principal amount as awarded but also upon the said amount inclusive of the amount of interest relating to the “pre-reference/past period”. Mr. Mehta further pointed out that similarly in sub-paragraph (b) (ii) of Para 58, the AT has proceeded to award interest on identical terms.

4. The AT in the Award, which ultimately came to be rendered had while dealing with the question of interest observed as under: -

“58. The Tribunal is, however, in agreement with the submissions of the Respondent's Counsel that the Respondent should not be penalized to pay interest for the laches of the Claimant for the period of about 8-9 years during which the Claimant failed to prosecute the matter diligently. Accordingly, the Tribunal holds that the Claimant will not be entitled to any interest for the period of about 8 years w.e.f. 01.01.2009 till 31.12.2016. As regards the rate at which the interest should be awarded for the pre-reference period, the Tribunal has no hesitation to award interest @ 18% per annum from July 1987 to 19.01.1998. The amount of interest at the above rate for the pre-reference period i.e. till the date of filing of the claim shall be added to the allowed amount of claim and would be considered for the purpose of calculation of pendent lite and future interest. In the opinion of the Tribunal, it would meet the ends of justice to award pendent-lite interest @ 12% per annum for the period between 20.01.1998 till 01.01.2009 and thereafter w.e.f. 01.01.2017 till the date of award on the aforesaid amount. So far as the award of future interest is concerned going by the provisions of Section 31(7)(b) of the Act, the Tribunal must award interest @ 18% per annum on the principal awarded amount i.e. the amount of partly awarded claims plus interest for pre-reference period from the date of award till the date of payment.

In nutshell the Claimant is held entitled to interest as under: -

a) Pre-reference / past period interest:



@ 18% per annum on a sum of Rs. 34,43,490.61 w.e.f. July 1987 up till 19.01.1998.

b) Pendente-lite interest:

- i) @ 12% per annum w.e.f. 20.01.1998 up till 31.12.2008 on the total amount (i.e. principal amount and the amount of interest of the pre-reference/past period).
- ii) @ 12% per annum w.e.f. 01.01.2017 till the date of award on the total amount (i.e. principal amount + amount of interest of the pre-reference/past period)

c) Future interest

@ 18% per annum from the date of the award till the date of payment on the total amount (i.e. principal amount + amount of interest of the pre-reference/past period).”

5. As is evident from the aforesaid extracts of the award, the AT had identified the pre-reference/past period to commence from July 1987 and to run upto 19 January 1998. The pendente-lite period was bifurcated into two parts - the first period commencing from 20 January 1998 upto 31 December 2008 and the second period running from 01 January 2017 till the date of the award.

6. It was, however, noted that the respondent was disentitled for any interest for a period of eight years starting from 01 January 2009 till 31 December 2016. This since, and as was noted by the AT, the respondent had virtually abandoned their claim and had taken no steps for the reconstitution of the AT consequent to Shri. L. R. Gupta having resigned from that office on 26 June 2008 and ultimately passing away in the year 2013. These facts have also been noticed by the Court while considering the Section 34 challenge to the interim



award and in its judgment of 30 January 2017 passed upon OMP No. 537/2007.

7. The AT has consequently awarded interest for the pre-reference/past period @ 18% from July 1987 up to 19 January 1998. However, it awarded *pendente-lite* interest in terms of Para 58(b) extracted hereinabove. It is here that the appellant assert that the AT has committed a manifest illegality and awarded interest contrary to the provisions of Section 31(7) of the Act.

8. Insofar as the question of interest is concerned, the learned Single Judge has in paragraphs 38 to 42 of the impugned judgment rendered the following observations: -

“**38.** The respondent had claimed interest at the rate of 24% per annum for a period of ten years and six months with effect from July 1987 to December 1997. The respondent had quantified the said amount at ₹3,19,57,039.00/-. In addition to the above, the respondent had also claimed *pendente lite* and future interest at the rate of 24% per annum.

39. The Arbitral Tribunal had considered the said claim for pre-reference interest, *pendente lite* interest and future interest separately. In respect of the pre-reference interest, the Arbitral Tribunal awarded interest at the rate of 18% per annum on the claims awarded with effect from July 1987 to 19.01.1998 being the date on which the Statement of Claims was filed. The Arbitral Tribunal did not allow the respondent's claim for interest at the rate of 24% per annum as it found the said rate to be on a higher side. The Arbitral Tribunal noted that the primary lending rates of nationalized banks were at their peak during the last two decades of the twentieth century and the first decade of the present century. Keeping that in view, the Arbitral Tribunal considered the rate of interest at 18% per annum to be appropriate. Although it is contended on behalf of NPCC that the said interest is excessive, there is no material that has been placed on record to contradict the



aforesaid reasoning. The Arbitral Tribunal had noted that during the period in question, that is, July 1987 to 19.01.1998, the nationalized banks were also lending at the rate of 18% per annum. NPCC had produced no material to dispute the same. It is common knowledge that the interest rates during the said period were high. The A&C Act was enacted in the year 1996 and Clause (b) of Section 31(7) of the A&C Act as originally enacted also provided for future interest at the rate of 18% per annum. Thus, the Arbitral Tribunal's decision to award pre-reference interest at the rate of 18% per annum warrants no interference by this court.

40. As far as *pendente lite* interest is concerned, the Arbitral Tribunal has awarded 12% per annum for the period 20.01.1998 till 31.12.2008 and from 01.01.2017 till 28.10.2020. Plainly, *pendente lite* interest at the rate of 12% per annum cannot by any stretch be considered to be exorbitant or unreasonable. Moreover, the Arbitral Tribunal has not awarded interest for the period 31.12.2008 to 01.01.2017. The Arbitral Tribunal did not award any *pendente lite* interest for the period of eight years from 2009 to 2016 as it accepted that during this period, the respondent was remiss and had pursued its claim before the Arbitral Tribunal diligently. Sh. L.R. Gupta, the then Arbitrator had resigned with effect from 26.03.2008, however, the respondent had not taken reasonable steps for seeking appointment of another arbitrator in his place. Such a petition was filed after this Court had disposed of NPCC's petition under Section 34 of the A&C Act on 30.01.2017.

41. The respondent has not challenged the decision of the Arbitral Tribunal in rejecting its claim for *pendente lite* interest for the said period of eight years.

42. The Arbitral Tribunal has awarded 18% future interest from the date of the award till the date of the payment. The Arbitral Tribunal has awarded the said interest relying on the provisions of Section 31(7)(b) of the A&C Act on an assumption that the said provision has also provided for award of future interest at the rate of 18% per annum. However, Clause (b) of Section 31 (7) of the A&C Act was substituted by the Arbitration and Conciliation (Amendment) Act, 2015 with retrospective effect from 23.10.2015. In terms of the amended clause, the arbitral award, unless the award otherwise directs, would carry interest at the rate of 2% higher than the current rate of interest prevalent on the date of the award. The explanation to Section 31(7)(b) further provides that the expression "current rate of interest" would have the same



meaning as assigned to it under Clause (b) of Section 2 of the Interest Act, 1978.”

9. The Court ultimately proceeded to set aside the impugned Award to the extent that it stipulated interest being paid @ 18% per annum for the future period and observed in paragraph 46 that future interest would stand pegged @ 9% per annum.

10. For the purposes of evaluating the merits of the submissions addressed on this appeal and noticed above, it would be apposite to extract Section 31 of the Act hereunder: -

“31. Form and contents of arbitral award.—(1) An arbitral award shall be made in writing and shall be signed by the members of the arbitral tribunal.

(2) For the purposes of sub-section (1), in arbitral proceedings with more than one arbitrator, the signatures of the majority of all the members of the arbitral tribunal shall be sufficient so long as the reason for any omitted signature is stated.

(3) The arbitral award shall state the reasons upon which it is based, unless—

(a) the parties have agreed that no reasons are to be given, or

(b) the award is an arbitral award on agreed terms under section 30.

(4) The arbitral award shall state its date and the place of arbitration as determined in accordance with section 20 and the award shall be deemed to have been made at that place.

(5) After the arbitral award is made, a signed copy shall be delivered to each party.

(6) The arbitral tribunal may, at any time during the arbitral proceedings, make an interim arbitral award on any matter with respect to which it may make a final arbitral award.



(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).

(8) The costs of an arbitration shall be fixed by the arbitral tribunal in accordance with section 31A.”

11. As is manifest from a conjoint reading of Clauses (a) and (b) of Section 31(7) of the Act, the AT now stands empowered to award interest at such rate as it may deem reasonable for the period between the date on which the cause of action arose upto the date when an Award ultimately comes to be rendered. In terms of Clause (b), the AT is additionally empowered to direct payment of interest for the period between the date of the Award till the amounts specified therein are paid.

12. Section 31(7) of the Act thus in unequivocal terms recognizes only two periods for which interest may be awarded. These have been spelt out to be the period falling between the date on which the cause of action arose till the Award is made and the second comprising of the period starting from the date of the Award till the actual payment of the sums that the AT may have found the respondent liable to pay.



This thus constitutes a clear departure from the interest regime which prevailed under the Arbitration Act, 1940 and where three distinct periods- pre-reference/past period, pendente lite and future period were recognized to exist.

13. The shift in the statutory position has been succinctly recognised and explained in **Sayed Ahmed and Company vs. State of Uttar Pradesh and Others**³ in the following terms: -

“9. The Arbitration Act, 1940 did not contain any specific provision relating to the power of the arbitrator to award interest. That led to considerable confusion about the power of arbitrators in regard of award of interest from the date of cause of action to date of award, that is, pre-reference period (from the date of cause of action up to the date of reference) and pendente lite (from the date of reference to the date of award).

10. Ultimately, this Court made it clear that the arbitrator had the jurisdiction and authority to award interest for the three periods, namely, pre-reference period, pendente lite and future period (from the date of award) if there was no express bar in the contract regarding award of interest — vide *Irrigation Deptt., Govt. of Orissa v. G.C. Roy* [(1992) 1 SCC 508] , *Executive Engineer, Dhenkanal Minor Irrigation Division v. N.C. Budharaj* [(2001) 2 SCC 721] as also the decision in *Bhagawati Oxygen Ltd. v. Hindustan Copper Ltd.* [(2005) 6 SCC 462]

11. Two more decisions dealing with cases arising under the Arbitration Act, 1940 require to be noticed. In *Superintending Engineer v. B. Subba Reddy* [(1999) 4 SCC 423] this Court held that interest for pre-reference period can be awarded only if there was an agreement to that effect or if it was allowable under the Interest Act, 1978. Therefore, claim for interest for pre-reference period, which is barred as per the agreement or under the Interest Act, 1978 could not be allowed. This Court however held that the arbitrator can award interest pendente lite and future interest.

³ (2009) 12 SCC 26



12. The principles relating to interest were summarised by this Court in *State of Rajasthan v. Ferro Concrete Construction (P) Ltd.* [(2009) 12 SCC 1] thus:

(a) Where a provision for interest is made on any debt or damages, in any agreement, interest shall be paid in accordance with such agreement.

(b) Where payment of interest on any debt or damages is barred by express provision in the contract, no interest shall be awarded.

(c) Where there is no express bar in the contract and where there is also no provision for payment of interest then the principles of Section 3 of the Interest Act will apply and consequently interest will be payable:

(i) where the proceedings relate to a debt (ascertained sum) payable by virtue of a written instrument at a certain time, then from the date when the debt is payable to the date of institution of the proceedings;

(ii) where the proceedings is for recovery of damages or for recovery of a debt which is not payable at a certain time, then from the date mentioned in a written notice given by the person making a claim to the person liable for the claim that interest will be claimed.

(d) Payment of interest pendente lite and future interest shall not be governed by the provisions of the Interest Act, 1978, but by the provisions of Section 34 of the Code of Civil Procedure, 1908 or the provisions of law governing arbitration as the case may be.

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14. The decisions of this Court with reference to the awards under the old Arbitration Act making a distinction between the pre-reference period and pendente lite period and the observation therein that the arbitrator has the discretion to award interest during pendente lite period in spite of any bar against interest contained in the contract between the parties are not applicable to arbitrations governed by the Arbitration and Conciliation Act, 1996.”



14. *Sayeed Ahmed* clearly holds that the distinction between the pre-reference/past period and pendente-lite period has clearly vanished and is inapplicable to arbitrations governed by the Act. It was thus not open for the AT to have framed the directions for payment of interest in the manner as specified in Para 58(b). The period falling between July 1987 till the date of Award would have constituted the period contemplated under Section 31(7)(a) of the Act and the period commencing from the date of Award till the amounts were actually paid by the appellant being the period which would fall within the net of Section 31(7)(b) of the Act.

15. Not only has the AT erred in this respect, it has committed a further illegality in forging the principal amount with interest as per Para 58(b). The pre-reference/past period had been duly identified by the AT to be from July 1987 up to 19 January 1998. The interest awarded for that period clearly could not have been subjected to a further levy of interest running through the period during which proceedings remained pending before the AT or for that matter being merged with the principal amount awarded. This clearly amounted to the AT levying interest on a compounded basis quite apart from having bifurcated the period over which interest could run contrary to the express command of Section 31(7) of the Act. The AT has committed a similar fallacy in framing directions for payment of interest for the period from 01 January 2017 till the date of the Award on what it has chosen to describe to be the total amount and which



again is explained to comprise of the principal amount as well as interest for the pre-reference/past period.

16. Not only are the aforementioned directions contrary to the plain and unambiguous language of Section 31(7) of the Act, they are in evident violation of the principles laid down by the Supreme Court in *Sayeed Ahmed*. The AT has thus clearly committed a manifest illegality in proceeding to include the amount of interest determined as payable for the pre-reference/past period to be added to the principal amount. In terms of the statutory scheme underlying Section 31(7) of the Act, the principal amount remains static and as determined by the AT. Interest on the same is thereafter open to be prescribed to be payable in terms of Clauses (a) and (b) of Section 31(7) of the Act. That interest, as we have held above, would commence from the date when the cause of action arose and would run up to the date when the AT rendered the Award.

17. Undisputedly and in the facts of the present case, that period would comprise of a starting point commencing from July 1987 and running up to 28 October 2020 excluding the period between 01 January 2009 and 31 December 2016. The AT thus clearly appears to have committed a patent illegality while framing directions for payment of interest.

18. However, it would be apposite at this juncture to briefly take note of some of the steps taken by parties during the pendency of the present appeal. Pursuant to the order dated 18 February 2022, the



appellant is stated to have deposited a total sum of Rs. 3,01,56,088/- as representing the amount payable under the Award. The issue with respect to the erroneous application of Section 31(7) of the Act and the award of interest as per Para 58(b) came to be raised before the Court on 23 May 2022. The respondent here was in terms of that order called upon to submit a computation sheet indicating the admitted amount which would be payable if the contention of the appellant were to be accepted. In light of the aforesaid, the respondent filed an affidavit dated 28 May 2022 indicating that the admitted and undisputed amount would work out to be Rs. 1,92,82,710/-. Accepting the aforesaid computation, the Court by its order of 31 May 2022, directed the release of the aforesaid amount in favour of the respondent.

19. We were informed that the amount of Rs. 1,92,82,710/- represents interest payable on the principal sum @ 12% for the period 20 January 1998 till 31 December 2008 and thereafter from 01 January 2017 till the date when Award was delivered. In our considered opinion, this would be a computation in accord with Section 31(7) of the Act.

20. We are thus of the considered view that the directions as contained in Para 58(b) would be liable to be set aside. However no further directions need be framed or issued since the respondent has already received interest when computed in terms of Section 31(7) of the Act and in accord with the findings recorded by us hereinabove.



21. Accordingly, the appeal shall stand allowed in the aforesaid terms. Since the respondent has already received the amount towards interest, the balance held in deposit with this Court shall stand released in favour of the appellant.

YASHWANT VARMA, J.

DHARMESH SHARMA, J.

AUGUST 01, 2023

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