

MORGAN SECURITIES AND CREDITS PVT. LTD. A

v.

VIDEOCON INDUSTRIES LTD.

(Civil Appeal No. 5437 of 2022)

SEPTEMBER 01, 2022 B

**[DR DHANANJAYA Y CHANDRACHUD AND
A S BOPANNA, JJ.]**

*Arbitration and Conciliation Act 1996: s. 31(7)(a), 31(7)(b)
– Post award interest on principal sum – Grant of – Discretion of C
arbitrator – On facts, arbitral award in favour of the appellant –
Post-award interest fixed at the rate of 18% on the principle sum,
from the date of award to the date of payment – Challenge to, by D
the appellant that the post-award interest of 18% pa should be
granted on the total sum awarded, both inclusive of principal and
pre-award interest – Single Judge held that the arbitrator had in E
his discretion restricted the post-award interest to the principal
amount and that the court would not interfere with the exercise of
discretion – On appeal, held: Arbitrator has the discretion to award F
post-award interest on a part of the sum – There is nothing in the
provision which restricts the discretion of the arbitrator for the grant
of post-award interest on the part of the sum, which the arbitrator
otherwise holds inherent to their authority – Discretion of the G
arbitrator can only be restricted by an express provision to that
effect – Phrase ‘unless the award otherwise directs’ in s. 31(7)(b),
only qualify the rate of post-award interest – As per s. 31(7)(b), if
the arbitrator does not grant post-award interest, the award holder
is entitled to post-award interest at eighteen percent – Arbitrator
must exercise the discretion in good faith, must take into account
relevant and not irrelevant considerations, and must act reasonably
and rationally taking cognizance of the surrounding circumstances
– Thus, the award of the arbitrator granting post award interest on
the principal amount does not suffer from an error apparent.*

Dismissing the appeal, the Court

**HELD 1.1 While, clause (a) of Section 31(7) of the H
Arbitration and Conciliation Act, 1996 is qualified by the arbitration
agreement, clause (b) is qualified by the arbitration award.**

- A **However, the placement of the phrases is crucial to their interpretation. The words, “unless otherwise agreed by the parties” occurs at the beginning of clause (a) qualifying the entire provision. However, in clause (b), the words, “unless the award otherwise directs” occurs after the words ‘a sum directed to be paid by an arbitral award shall’ and before the words ‘carry interest at the rate of eighteen per cent’. Thereby, those words only qualify the rate of post-award interest. [Para 18][833-F-G]**
- B

1.2 Section 31(7)(a) confers a wide discretion upon the arbitrator in regard to the grant of pre-award interest. The

- C **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.**
- D **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 percent. [Para 19][833-H; 834-A-C]**
- E

1.3 The arbitrator has the discretion to grant post-award interest. Clause (b) does not fetter the discretion of the arbitrator

- F **to grant post-award interest. It only contemplates a situation in which the discretion is not exercised by the arbitrator. Therefore, the observations *Hyder Consulting*'s case on the meaning of ‘sum’ will not restrict the discretion of the arbitrator to grant post-award interest. There is nothing in the provision which restricts the**
- G **discretion of the arbitrator for the grant of post-award interest which the arbitrator otherwise holds inherent to their authority. [Para 20][834-C-E]**

1.4 The purpose of granting post-award interest is to ensure that the award- debtor does not delay the payment of the award.

- H

With the proliferation of arbitration, issues involving both high and low financial implications are referred to arbitration. The arbitrator takes note of various factors such as the financial standing of the award-debtor and the circumstances of the parties in dispute before awarding interest. The discretion of the arbitrator can only be restricted by an express provision to that effect. Clause (a) subjects the exercise of discretion by the arbitrator on the grant of pre-award interest to the arbitral award. However, there is no provision in the Act which restricts the exercise of discretion to grant post-award interest by the arbitrator. The arbitrator must exercise the discretion in good faith, must take into account relevant and not irrelevant considerations, and must act reasonably and rationally taking cognizance of the surrounding circumstances. [Para 21][834-E-G]

1.5 The judgment of the two-Judge Bench in *SL Arora's* case was referred to a three-Judge Bench in *Hyder Consulting's* case on the question of whether post-award interest could be granted on the aggregate of the principal and the pre-award interest arrived at under Section 31(7)(a) of the Act wherein it was held that the arbitrator may grant post-award interest on the aggregate of the principal and the pre-award interest. The opinion did not discuss the issue of whether the arbitrator could use their discretion to award post- award interest on a part of the 'sum' awarded under Section 31(7)(a). The phrase 'unless the award otherwise directs' in Section 31(7)(b) only qualifies the rate of interest. According to Section 31(7)(b), if the arbitrator does not grant post- award interest, the award holder is entitled to post- award interest at eighteen percent. Section 31(7)(b) does not fetter or restrict the discretion that the arbitrator holds in granting post-award interest. The arbitrator has the discretion to award post-award interest on a part of the sum. The arbitrator must exercise the discretionary power to grant post- award interest reasonably and in good faith, taking into account all relevant circumstances. By the arbitral award dated 29 April 2013, a post- award interest of eighteen percent was awarded on the principal amount in view of the judgment of this Court in *SL Arora's* case. The arbitrator has the discretion to award post-award interest on a part of the 'sum'; the 'sum' as interpreted in *Hyder Consulting's*

A

B

C

D

E

F

G

H

- A **case. Thus, the award of the arbitrator granting post award interest on the principal amount does not suffer from an error apparent. [Para 22][834-H; 835-A-F]**

Hyder Consulting Ltd. v. State of Orissa (2013) 2 SCC 719; State of Haryana v. SL Arora (2010) 3 SCC 690 :

- B **[2010] 2 SCR 297 – referred to.**

Case Law Reference

(2013) 2 SCC 719	referred to	Para 10
-------------------------	--------------------	----------------

[2010] 2 SCR 297	referred to	Para 10
-------------------------	--------------------	----------------

- C CIVIL APPELLATE JURISDICTION: Civil Appeal No. 5437 of 2022.

From the Judgment and Order dated 26.02.2020 of the High Court of Delhi at New Delhi in FAO (OS) (COMM) No. 9 of 2020.

- D Abhishek Puri, Ms. Aruna Gupta, Ms. Surabhi Gupta, Advs. for the Appellant.

Nakul Dewan, Sr. Adv., Arjun Pall, Ms. Sadhika Gulati, Ms. Neelu Mohan, Sathvik Chandrasekhar, S. S. Shroff, Advs. for the Respondent.

The Judgment of the Court was delivered by

- E **DR DHANANJAYA Y CHANDRACHUD, J.**

1. This appeal arises from a judgment dated 26 February 2020 of the High Court of Delhi by which the appeal under Section 37 of the Arbitration and Conciliation Act 1996¹ against a judgment of the Single Judge dated 7 February 2019 has been dismissed. At the core, the issue

- F is whether the arbitrator has the discretion to grant post-award interest only on the principal sum due under Section 31(7)(b) of the Act.

Facts

- G 2. On 27 January 2003, the appellant and the respondent entered into an agreement under which the respondent availed of bill discounting facilities from the appellant. The appellant disbursed Rs. 5,00,32,656 pursuant to the agreement. The dues remained unpaid. The appellant issued a notice to the respondent on 10 January 2006 demanding the

H ¹ “The Act”

payment of the principal amount of Rs. 5,00,32,656 as on 17 April 2003, which is the date of default, along with an overdue interest. Since the respondent did not pay the amount as demanded, the appellant issued a notice on 31 January 2006, invoking the arbitration clause of the agreement. A

3. The sole arbitrator rendered an arbitral award in favour of the appellant on 1 March 2013. The award was corrected on 29 April 2013 and decrees the claim of the appellant in the amount of Rs. 5,00,32,656. Interest at the rate of (i) twenty one percent per annum has been granted from the date of default to the date of the demand notice; (ii) thirty six percent per annum with monthly rests from the date of the demand notice to the date of award (“pre-award interest”); and (iii) eighteen percent per annum on the principal amount of Rs. 5,00,32,656 from the date of award to the date of payment (“post-award interest”). The relevant extract of the award is set out below: B

“In view of the findings of the Tribunal above, Respondent No. 2 is liable to pay a sum of Rs. 5,00,32, 656 (Rupees five crores thirty two thousand six hundred and fifty six only) to the Claimant along with interest at 21% p.a till the date of demand notice. After the date of the demand notice, i.e 10.01.2006, the Claimant is entitled to receive interest at the rate 36% p.a with monthly rests. Further, in terms of the aforesaid decision in S.L Arora, the Claimant is entitled to receive post- award interest at the rate of 18% p.a only on the principal amount of Rs 5,00,32,656/” E

(emphasis supplied) F

4. The appellant challenged the arbitral award² in a petition under Section 34 before the Delhi High Court raising objections on the grant of post-award and pre-award interest. The respondent also filed a petition³. The appellant urged that the post-award interest of eighteen percent per annum should be granted on the total sum awarded, inclusive both of principal and pre-award interest. By a judgment dated 7 February 2019, the Single Judge of the Delhi High Court dismissed the petition filed by the appellant on the grant of post-award interest. The Single Judge held that the Arbitrator had in his discretion restricted the post-award interest G

² OMP No. 972 of 2013 H

³ OMP 665 of 2013

- A to the principal amount and that the court would not interfere with the exercise of discretion:

- The appeal against the judgment of the Single Judge was dismissed by the Division Bench of the High Court by a judgment dated 26 February 2020. The counsel for the appellant before the High Court placed reliance on the decision of a three-Judge Bench of this Court in **Hyder Consulting (UK) Limited v. Governor, State of Orissa**⁴ and contended that post-award interest ought to be granted on the sum directed to be paid under the arbitral award, which also includes the pre-award interest. Counsel for the respondent contended that reliance ought not to be placed on the judgment in **Hyder Consulting** (*supra*) since the decision in **State of Haryana v. SL Arora**⁵ was the applicable law when the petition under Section 34 was instituted. The Division Bench of the High Court observed that the judgment in **Hyder Consulting** (*supra*) clarifies that when the arbitral award is silent on post-award interest, it would be payable on the ‘sum’ awarded, which would include both the principal and the pre-award interest. The Division Bench held that in this case since the arbitral award is not silent on post-award interest, the provisions of Section 31(7)(b) of the Act would not be applicable.
- B Both the Single Judge and the Division Bench of the Delhi High Court also decided on the other objections of the appellant and the respondent.
- C 5. Proceedings under Article 136 of the Constitution were initiated for challenging the judgment of the Division Bench of the Delhi High Court dated 26 February 2020. On 16 July 2021, this Court issued notice confined to the issue of post-award interest. The order reads as follows:
- “1 Issue notice confined to the post award interest. We are not entertaining the Special Leave Petition as regards the award of interest prior to the date of the award.
- D 2 The Arbitrator, in awarding interest at the rate of 18% post award on the principal sum, based the award on the decision in **State of Haryana v SL Arora**. The decision in **S L Arora** was overruled in **Hyder Consulting (UK) Ltd. v. State of Orissa**.

H ⁴(2015) 2 SCC 189

⁵(2010) 3 SCC 690

3. In view of the above premises, we issue notice confined to the A
above issue returnable in eight weeks."

Submissions

6. Mr. Abhishek Puri, learned counsel appearing for the appellant
made the following submissions:

- (i) In view of the provisions of Section 31(7) of the Act and the judgment of this Court in **Hyder Consulting** (supra), if pre-award interest is awarded on the principal sum, the aggregate of the principal and the pre-award interest is the ‘sum’ on which post-award interest must be granted; B
- (ii) According to the majority opinion in **Hyder Consulting** (supra), once pre-award interest is granted on the principal sum under Section 31(7)(a) of the Act, the interest award loses its character as interest and takes the color of the awarded ‘sum’ for the purposes of post-award interest under Section 31(7)(b) of the Act; C
- (iii) The arbitral award is silent on post-award interest on the component of interest. Therefore, the appellant is entitled to the statutory rate of interest on the aggregate of the principal and pre-award interest under Section 31(7)(b) of the Act; D
- (iv) Even according to the decision in **SL Arora** (supra), the discretion of the arbitral tribunal under Section 31(7)(b) of the Act was only with respect to the rate of the post-award interest. In this case, the arbitrator has awarded post-award interest only on the principal sum solely in view of the judgment in **SL Arora** (supra); E
- (v) The arbitrator only has the discretion to determine the rate post-award interest. The Arbitrator does not have the discretion to determine the ‘sum’ on which the post-award interest is to be granted; and F
- (vi) The contention that Section 31(7)(b) of the Act would be inapplicable in cases where the arbitrator has awarded post-award interest by exercising discretion is not borne out of the decisions in **SL Arora** (supra) or **Hyder Consulting** (supra). G

7. Mr Nakul Dewan, learned senior counsel for the respondent
made the following submissions:

B

C

D

E

F

G

H

- A (i) Section 31(7)(b) is qualified by the phrase “unless the award otherwise directs”. Therefore, Section 31(7)(b) would only be applicable where an arbitral award is silent on the component of post-award interest;
- B (ii) Under Section 31(7)(b) of the Act, the arbitrator has the discretion to (a) grant post-award interest; (b) determine the quantum over which the post-award interest should be granted; and (c) determine the rate at which the interest should be calculated; and
- C (iii) In **Hyder Consulting** (*supra*), a three-Judge Bench of this Court overruled **SL Arora** (*supra*) to the extent that the latter decision held that the arbitral tribunal does not have the power to award interest over interest. However, in **Hyder Consulting** (*supra*), it was not held that it is mandatory that the post-award interest ought to only be granted on the aggregate of the principal and the pre-award interest.

D

Analysis

- E 8. Section 31 provides for the “form and content of arbitral award”. Sub-section 7 of Section 31 deals with pre-award and post-award interest. Section 31(7)(a) provides for pre-award interest, that is for the period between the date on which the cause of action arose and the date on which the award is made. Section 31(7)(b) provides for post-award interest, between the date of award to the date of payment. Section 31(7) reads as follows:

F

(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;

G

(b) **A sum directed to be paid by an arbitral award shall**, unless the award otherwise directs, carry interest at the rate of eighteen per centum per annum from the date of the award to the date of payment.

H

(emphasis supplied)

9. In **SL Arora** (*supra*) this court had to interpret the expression ‘sum’ in Section 31(7). This Court framed the following issue:

“(i) Whether Section 31(7) of the Act authorises and enables Arbitral Tribunals to award interest on interest from the date of award?”

Justice R V Raveendran writing for a two-Judge Bench held that Section 31(7) does not enable the arbitral tribunal to provide interest on interest from the date of the award. While arriving at this conclusion, the court observed that:

(i) Section 31(7) does not make any reference to the payment of compound interest or interest on interest. The phrase “sum directed to be paid by the award” refers to the award of “sums on substantive claims”, that is, the principal amount. In the absence of a provision enabling the grant of compound interest, such a power cannot be read into the provisions either for the pre-award period or for the post-award period;

(ii) A high rate of interest at eighteen percent is statutorily recognised in Section 31(7)(b) for the post-award period to deter the award-debtor from delaying the payment of monies as directed in the award;

(iii) Section 31(7)(a) confers the arbitrator with the discretion to determine the rate of interest, the period for which the interest is to be paid, and the quantum on which interest is to be awarded. However, the discretionary power of the arbitrator is subject to the contract between the parties. Section 31(7)(b) provides the arbitrator the discretion to award interest for the post-award period. The discretion is not subject to any contract. If the arbitrator does not exercise the discretion by awarding post-award interest, then the mandated interest of eighteen percent shall be awarded; and

(iv) If the award provides interest at a specified rate till the date of payment, then Section 31(7)(b) of the Act will not be invoked. Section 31(7)(b) will be invoked only if the award is silent on the post-award interest.

B

C

D

E

F

G

H

- A 10. A two-judge bench of this Court⁶ referred the correctness of the decision in **SL Arora** (*supra*) to a three-Judge Bench. In **Hyder Consulting** (*supra*), a three-Judge Bench overruled the decision in **SL Arora** (*supra*). Three separate judgments were authored. In order to determine the *ratio decidendi* in **Hyder Consulting** (*supra*), it is necessary that all three opinions are carefully analysed. Justice SA Bobde, observed that the view in **SLArora** (*supra*) that pre-award interest should not be included in the ‘sum’ for calculating post-award interest is erroneous:
- “2. It is not possible to agree with the conclusion in *S.L. Arora case* that Section 31(7) of the Act does not require that interest which accrues till the date of the award be included in the ‘sum’ from the date of award for calculating the post-award interest. In my humble view, this conclusion does not seem to be in consonance with the clear language of Section 31(7) of the Act.”
- D Referring to Section 31(7)(a), Justice Bobde observed that (i) since Parliament has not qualified the phrase ‘sum’ with the word ‘principal’, (as in Section 34 of the Code of Civil Procedure 1908) the word ‘sum’ only takes the meaning of ‘a particular amount of money’; (ii) the ‘sum’ would include both principal and interest; and (iii) when interest is directed to be paid on the principal under Section 31(7)(a), the aggregate amount after merging pre-award interest and the principal would be the ‘sum’, where the two components of principal and interest would have lost their identities. The relevant observations are extracted below:
- F 7. Thus, when used as a noun, as it seems to have been used in this provision, the word “sum” simply means “an amount of money”; whatever it may include —“principal” and “interest” or one of the two. Once the meaning of the word “sum” is clear, the same meaning must be ascribed to the word in clause (b) of sub-section (7) of Section 31 of the Act, where it provides that a *sum* directed to be paid by an arbitral award “*shall ... carry interest ...*” from the date of the award to the date of the payment i.e. post-award. **In other words, what clause (b) of sub-section (7) of Section 31 of the Act directs is that the “sum”, which is directed to be paid by the award, whether inclusive or**
-
- H ⁶*Hyder Consulting Ltd. v. State of Orissa, (2013) 2 SCC 719*

exclusive of interest, shall carry interest at the rate of eighteen per cent per annum for the post-award period, unless otherwise ordered. A

[...]

13. Thus, it is apparent that vide clause (a) of sub-section (7) of Section 31 of the Act, Parliament intended that an award for payment of money may be inclusive of interest, and the “sum” of the principal amount plus interest may be directed to be paid by the Arbitral Tribunal for the pre-award period. **Thereupon, the Arbitral Tribunal may direct interest to be paid on such “sum” for the post-award period vide clause (b) of sub-section (7) of Section 31 of the Act, at which stage the amount would be the sum arrived at after the merging of interest with the principal; the two components having lost their separate identities.”** B

(emphasis supplied) C D

11. Justice AM Sapre in his concurring opinion noted that while the grant of pre-award interest is at the discretion of the arbitral tribunal; post-award interest is mandated by the statute where the arbitrator only has the discretion to decide the rate of interest. That is, if the arbitral tribunal has used its discretion to grant post-award interest at a particular rate, then such rate as directed would prevail, otherwise, the rate of interest mentioned in the statute would be applicable. The relevant extract of the judgment reads as follows:

“26. [...] Pre-award interest is at the discretion of the Arbitral Tribunal, while the post-award interest on the awarded sum is mandate of the statute—the only difference being that of rate of interest to be awarded by the Arbitral Tribunal. In other words, if the Arbitral Tribunal has awarded post-award interest payable from the date of award to the date of payment at a particular rate in its discretion then it will prevail else the party will be entitled to claim post-award interest on the awarded sum at the statutory rate specified in clause (b) of Section 31(7) of the Act i.e. 18%. Thus, there is a clear distinction in time period and the intended purpose of grant of interest.” F G

(emphasis supplied) H

A Justice Sapre agreed with Justice Bobde on the meaning of the expression ‘sum’ and held that once the interest is ‘included in the sum’, then the interest and the principal component cannot be segregated :

B “28. Therefore, for the purposes of an award, there is no distinction between a “*sum*” with interest, and a “*sum*” without interest. **Once the interest is “*included in the sum*” for which the award is made, the original sum and the interest component cannot be segregated and be seen independent of each other. The interest component then loses its character of an “*interest*” and takes the colour of “*sum*” for which the award is made.**

C 29. There may arise a situation where, the Arbitral Tribunal may not award any amount towards principal claim but award only “*interest*”. This award of interest would itself then become the “*sum*” for which an award is made under Section 31(7)(a) of the Act. **Thus, in a pre-award stage, the legislation seeks to make no distinction between the sum awarded and the interest component in it.**

D [...]

E 31. [...] **Interest under clause (b) is granted on the “sum” directed to be paid by an arbitral award wherein the “sum” is nothing more than what is arrived at under clause (a)”**

(emphasis supplied)

F 12. The view of Chief Justice HL Dattu in his dissenting opinion was that :

G (i) The phrase ‘sum’ in Section 31(7)(a) refers to ‘money’ in common parlance. Section 31(7)(a) states that interest may be awarded on the ‘sum’, which would mean the interest awarded on the money for which the arbitral award is made. Therefore, sum refers to the ‘principal’ amount awarded;

H (ii) The phrase ‘sum’ as used in clause (b) is used in the same context as in clause (a). Therefore, the phrase ‘sum’ in clause (b) also means the ‘principal’ amount; and

(iii) The words ‘unless the award otherwise directs’ in Section 31(7)(b) would mean that if the arbitral tribunal directs post-award interest to be paid, then Section 31(7)(b) would be

inapplicable. The corollary is that even if the award directs that no post-award interest is to be granted, clause (b) cannot be invoked. The observations in the dissent are extracted below:

A

“81. [...] The said clause uses the phrase “*unless the award otherwise directs*”, which would mean that in the event the Arbitral Tribunal, in its award, makes a provision for interest to be imposed in this second stage as envisaged by sub-section (7) of Section 31 of the 1996 Act, clause (b) would become inapplicable. By the said award, the Arbitral Tribunal has the power to impose an interest for the post-award period which may be higher or lower than the rate as prescribed under clause (b). Even if the award states that no interest shall be imposed in the post-award period, clause (b) cannot be invoked.

B

C

82. If the arbitral award is silent on the question of whether there would be any post-award interest, only in that situation could clause (b) be made applicable. In the said situation, it would be mandatory as per law that the award could carry interest at the rate of 18% per annum from the date of the award to the date of payment. The term used in the given clause is “shall”, therefore, if applicable, the imposition of interest as per clause (b) would be mandatory.”

D

13. The contention of the respondent is that Section 31(7)(b) could be invoked only when the arbitration award is silent on post-award interest. That is, if the award does not make a specific provision for post-award interest, then in view of Section 31(7)(b) of the Act, post-award interest of eighteen percent shall be paid on the ‘sum’, for which purpose the ‘sum’ shall be the aggregate of the principal and pre-award interest. The argument of Mr Nakul Dewan is that the arbitral tribunal has the discretion to determine- a) whether post-award interest should be granted; b) the ‘sum’ on which the post-award interest is to be granted; and c) the rate of such interest.

E

F

14. The interpretation of Section 31(7)(b) has to focus on the meaning of two phrases - first, the expression “sum”; and second, “unless the award otherwise directs”. The phrase ‘sum’ has been interpreted in the opinion of Justice Bobde and in the concurring opinion of Justice Sapre in **Hyder Consulting** (*supra*) to mean the amount directed to be paid by an arbitral award as arrived in Section 31(7)(a), which would

G

H

- A include the aggregate of the principal and the pre-award interest. While Justice Sapre was of the view that the arbitrator only has the discretion to determine the rate of post-award interest, Justice Bobde did not expressly discuss the ambit of discretion of the arbitrator while granting post-award interest. In Justice Bobde's opinion, there was no discussion on whether the arbitrator had the discretion to order post-award interest on a part of the 'sum' that was arrived under Section 31(7)(a).

- B
- C 15. On the interpretation of the words 'unless the award otherwise directs', Justice Sapre interpreted them to mean that post-award interest is a statutory mandate and that the arbitrator only has the discretion to determine the rate of interest to be awarded. Justice Bobde did not specifically interpret the phrase 'unless the award otherwise directs'. The learned Judge made a passing reference to the phrase in paragraph 7 of the judgment, where he observed that "*In other words, what clause (b) of sub-Section (7) of Section 31 of the Act directs is that the "sum", which is directed to be paid by the award, whether inclusive*
- D *or exclusive of interest, shall carry interest at the rate of eighteen per cent per annum for the post-award period, unless otherwise ordered.*" However, in paragraph 13 of the judgment, the learned Judge observed, "*Thereupon the Arbitral Tribunal may direct interest to be paid on such 'sum' for the post-award period vide clause (b) of sub-section (7) of Section 31 of the Act, at which stage the amount would be the sum arrived at after the merging of interest with the principal; the two components having lost their separate identities.*"

- E
- F 16. The use of the words 'may direct interest to be made' in paragraph 13 of Justice Bobde's opinion could be interpreted to mean either that the arbitrator has the discretion to decide not to grant post-award interest or as recognising the discretion of the arbitrator on whether to grant interest on the aggregate of the principal and the pre-award interest. Nothing in the observations extracted above limit the discretion of the arbitrator in awarding post-award interest. This conclusion is further fortified by the issue framed in **Hyder Consultancy** (supra),
- G where the Court was to determine if the conclusion in **SL Arora** (supra) is correct to the extent that it holds that post-award interest cannot be granted on the aggregate of principal and pre-award interest. In the concluding paragraph of Justice Bobde's opinion, it has been observed that **SL Arora** (supra) was wrongly decided:

H

“24. In the result, I am of the view that *SL Arora case* is wrongly decided in that it holds that a sum directed to be paid by an Arbitral Tribunal and the reference to the award on the substantive claim does not refer to interest pendent lite awarded on the “sum directed to be paid upon award” and that in the absence of any provision of interest upon interest in the contract the Arbitral Tribunal does not have the power to award interest upon interest, or compound interest either for the pre-award period or for the post-award period. Parliament has the undoubted power to legislate on the subject and provide that the Arbitral Tribunal may award interest on the sum directed to be paid by the award, meaning a sum inclusive of principal sum adjudged and the interest, and this has been done by Parliament in plain language.”

17. The decision in **Hyder Consulting** (supra) was on the limited issue of whether post-award interest could be granted on the aggregate of the principal and the pre-award interest. As noted above, the opinion authored by Justice Bobde was limited to this aspect of post-award interest. It was in the concurring opinion of Justice Sare that it was held that the arbitrator only has the discretion to determine the rate of post-award interest. Therefore, the issue of whether the arbitrator could award post-award interest on a part of the aggregate sum was not conclusively decided the opinions forming a part of the majority in **Hyder Consulting** (supra).

18. The issue before us is whether the phrase ‘unless the award otherwise directs’ in Section 31(7)(b) of the Act only provides the arbitrator the discretion to determine the rate of interest or both the rate of interest and the ‘sum’ it must be paid against. At this juncture, it is crucial to note that both clauses (a) and (b) are qualified. While, clause (a) is qualified by the arbitration agreement, clause (b) is qualified by the arbitration award. However, the placement of the phrases is crucial to their interpretation. The words, “unless otherwise agreed by the parties” occurs at the beginning of clause (a) qualifying the entire provision. However, in clause (b), the words, “unless the award otherwise directs” occurs after the words ‘a sum directed to be paid by an arbitral award shall’ and before the words ‘carry interest at the rate of eighteen per cent’. Thereby, those words only qualify the rate of post-award interest.

19. Section 31(7)(a) confers a wide discretion upon the arbitrator in regard to the grant of pre-award interest. The arbitrator has the

A

B

C

D

E

F

G

H

- A 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 percent.
- 20. The arbitrator has the discretion to grant post-award interest. Clause (b) does not fetter the discretion of the arbitrator to grant post-award interest. It only contemplates a situation in which the discretion is not exercised by the arbitrator. Therefore, the observations **Hyder Consulting** (supra) on the meaning of 'sum' will not restrict the discretion of the arbitrator to grant post-award interest. There is nothing in the provision which restricts the discretion of the arbitrator for the grant of post-award interest which the arbitrator otherwise holds inherent to their authority.
- 21. The purpose of granting post-award interest is to ensure that the award-debtor does not delay the payment of the award. With the proliferation of arbitration, issues involving both high and low financial implications are referred to arbitration. The arbitrator takes note of various factors such as the financial standing of the award-debtor and the circumstances of the parties in dispute before awarding interest. The discretion of the arbitrator can only be restricted by an express provision to that effect. Clause (a) subjects the exercise of discretion by the arbitrator on the grant of pre-award interest to the arbitral award. However, there is no provision in the Act which restricts the exercise of discretion to grant post-award interest by the arbitrator. The arbitrator must exercise the discretion in good faith, must take into account relevant and not irrelevant considerations, and must act reasonably and rationally taking cognizance of the surrounding circumstances.
- 22. In view of the discussion above, we summarise our findings below:
 - (i) The judgment of the two-Judge Bench in **SL Arora** (supra) was referred to a three-Judge Bench in **Hyder Consulting**

- (supra) on the question of whether post-award interest could be granted on the aggregate of the principal and the pre-award interest arrived at under Section 31(7)(a) of the Act; A
- (ii) Justice Bobde's opinion in **Hyder Consulting** (supra) held that the arbitrator may grant post-award interest on the aggregate of the principal and the pre-award interest. The opinion did not discuss the issue of whether the arbitrator could use their discretion to award post-award interest on a part of the 'sum' awarded under Section 31(7)(a); B
- (iii) The phrase 'unless the award otherwise directs' in Section 31(7)(b) only qualifies the rate of interest; C
- (iv) According to Section 31(7)(b), if the arbitrator does not grant post-award interest, the award holder is entitled to post-award interest at eighteen percent; D
- (v) Section 31(7)(b) does not fetter or restrict the discretion that the arbitrator holds in granting post-award interest. The arbitrator has the discretion to award post-award interest on a part of the sum; E
- (vi) The arbitrator must exercise the discretionary power to grant post-award interest reasonably and in good faith, taking into account all relevant circumstances; and F
- (vii) By the arbitral award dated 29 April 2013, a post-award interest of eighteen percent was awarded on the principal amount in view of the judgment of this Court in **SL Arora** (supra). In view of the above discussion, the arbitrator has the discretion to award post-award interest on a part of the 'sum'; the 'sum' as interpreted in **Hyder Consulting** (supra). Thus, the award of the arbitrator granting post award interest on the principal amount does not suffer from an error apparent.
23. For the reasons indicated above, the appeal against the judgment of the Delhi High Court dated 26 February 2020 is dismissed. G
24. All pending application(s), if any, are disposed of.