Jaiprakash Associates Ltd. ... vs Tehri Hydro Development Corporation ... on 7 February, 2019

Equivalent citations: AIR 2019 SUPREME COURT 5006, AIRONLINE 2019 SC 576, 2020 (1) ADR 395, (2019) 1 CLR 977 (SC), (2019) 2 ARBILR 1, (2019) 2 RECCIVR 169, (2019) 2 SCALE 718, (2019) 6 ANDHLD 251, (2020) 2 MAH LJ 43, AIR 2020 SC (CIV) 338

Author: A.K. Sikri

Bench: M. R. Shah, S. Abdul Nazeer, A.K. Sikri

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). 1539 OF 2019
(ARISING OUT OF SLP (C) NO. 13551 OF 2013)

JAIPRAKASH ASSOCIATES LTD. (JAL)
THROUGH ITS DIRECTOR .....

VERSUS

TEHRI HYDRO DEVELOPMENT
CORPORATION INDIA LTD. (THDC)
THROUGH ITS DIRECTOR .....RE

JUDGMENT

A.K. SIKRI, J.

Leave granted.

2) The appellant herein was awarded the contract under which it was to execute certain Works. Agreement in this behalf was signed on 18th December, 1998. Some disputes arose between the parties. Since the agreement contained an arbitration clause, two claims raised by the appellant were referred for arbitration. The arbitral tribunal was of three Arbitrators. This arbitration was under the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the '1996 Act'). The majority award pronounced on October 10, 2010 allowed the two claims to certain extent. On the said claims awarded, the Arbitrators also granted interest at the rate of 10% per annum from the

date when the arbitration was invoked, i.e., October 09, 2007, till 60 days after the award. Future interest at the rate of 18% per annum till the date of payment was also awarded.

3) Dispute which has travelled upto this Court pertains only to the question as to whether the Arbitrators could award any interest in view of Clauses 50 and 51 of the General Conditions of Contract (GCC) which governed the terms between the parties. The objections were filed before the High Court. A Single Judge of the High Court of Delhi passed the order dated November 15, 2011 quashing the award limited to the interest that was awarded by the Arbitrators. The appellant preferred intra-court appeal which has been dismissed by the Division Bench of the High Court, thereby upholding the judgment of the Single Judge. The effect is that the High Court has held that no interest is payable as Clauses 50 and 51 of GCC bar the arbitrators from granting interest.

4) It may be pointed out that on interpreting Clauses 50 and 51 of the General Conditions of Contract, the view taken by the High Court is that these clauses categorically provide that no interest would be payable to the contractor on the money due to him. The said Clauses read as under:

> "Clause 50.0 Interest on money due to the contractor No omission on the part of the Engineer in charge to pay the amount due upon measurement or otherwise shall vitiate or make void the contract, nor shall the contractor be entitled to interest upon any guarantee or payments in arrears nor upon any balance which may on the final settlement of his account, be due to him.
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> Clause 51.0 No claim for delayed payment due to dispute etc. No claim for interest or damage will be entertained or be payable by the corporation in respect of any amount or balance which may be lying with the corporation owing to nay dispute, different or misunderstanding between the parties or in respect of any delay or omission on the part of he Engineer in charge in making intermediate or final payments on in any other respect whatsoever." The Award makes the following observations in this behalf:
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> "As seen from above, Clause 50.0 and 51.0 of the Contract deny interest on the Claimant's dues by the Respondent due to dispute etc. However as per above quoted judgment of Hon'ble Supreme Court of India, the claim for interest can be considered by the Arbitration Tribunal." Notwithstanding the same, the learned Arbitrators granted the interest by relying upon the law declared by this Court in Board of Trustees for the Port of Calcutta v. Engineers-De-Space-
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> Age1 and following observations from the said judgment were quoted:
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> ".....In other words, according to their Lordships the arbitrator is expected to act and make his award in accordance with general law of the land but subject to an agreement, provided, the agreement is valid and legal. Lastly, it was pointed out that interest pendent like is not a matter of substantive law, interest for the period anterior to reference. Their Lordship concluded that when the agreement between

> the parties does not prohibit grant of interest and where a party claims interest and that dispute is referred to the arbitrator, he will have the power to award interest pedente lite for the simple reason that in such a case it is presumed that interest was implied term of the agreement between the parties; it is then a matter of exercise of discretion by the arbitrator. The position of law, has, therefore, been clearly stated in the aforesaid decision of the Constitution Bench.
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> .....Strictly construed the term of the contract merely prohibits the Commissioner from paying interest to the contractor for delayed payment but once the matter goes to the arbitration the discretion of the Arbitrator is not, in any manner, stifled by this term of the contract and the Arbitrator would be entitled to consider the question of grant of interest pendent lite and award interest if he finds the claim to be justified. We are, therefore, of the opinion that under the clause of the contract the Arbitrator was in no manner prohibited from awarding interest pendente lite."
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> 5) As stated above, the High Court, on the other hand, has taken the view that if interest is prohibited as per the expressed terms of the contract between the parties, the Arbitrator does not get jurisdiction to award interest. Further, insofar as interpretation to the aforesaid clauses is concerned, the High Court noticed that 1 (1996) 1 SCC 516 these Clauses were on the same terms as Clause 1.2.14 and 1.2.15 of the contract which were subject matter of construction in Tehri Hydro Development Corporation (THDC) Limited & Anr. v.

Jai Prakash Associates Limited2. In the said judgment, this Court has categorically held that those clauses to mean that no interest was payable on claim for delayed payment due to the contractor. Therefore, same construction needed to be given to Clauses 50 and 51 of GCC in the instant case.

6) Mr. Rupinder S. Suri, learned senior counsel appearing for the appellant made two-fold submissions before us, which are to the following effect:

> (i) In the first place, it is submitted that judgment in Jayprakash Associates Limited case is contrary to the earlier judgment rendered by this Court in State of Uttar Pradesh v. Harish Chandra and Company3 . Both the judgments are by the Benches of Three-Judges. His submission is that judgment of Harish Chandra is earlier in point of time, which has not been taken note of in Jayprakash Associates Limited case. In such a scenario, as per Mr. Suri, the judgment which is passed earlier should hold the field and, therefore, we should be guided by the law laid down in Harish Chandra case.

2 (2012) 12 SCC 10 3 (1999) 1 SCC 63

(ii) Second submission, in the alternative, is that in order to resolve the conflict, the matter should be referred to a larger Bench.

7) Dilating on the first submission, an attempt of Mr. Suri was to show that the clauses of the contract in question, when interpreted correctly would clearly bring about that these clauses did not prohibit the Arbitrators from granting interest. The learned counsel emphasised the words "or any other respect whatsoever" occurring in Clause 51 of the GCC and argued that these are to be read ejusdem generis and should take their colour from the earlier part of clause. He submitted that when these words are read in the aforesaid manner, it is only in those cases where some amount or balance is lying with the respondent because of any dispute different or misunderstanding between the parties etc., interest is not payable. Such a situation would not arise in those cases where claim is raised on other counts and awarded by the Arbitrators. He also submitted that Clause 51 in the contract in the instant case was similar to Clause 1.9 of the contract in Harish Chandra case and the Court interpreted the said clause to mean that Arbitrator was not precluded from awarding the interest.

8) In this hue, his alternate submission was that two similar or almost identical clauses are interpreted in a different manner in Harish Chandra case and Jayprakash Associates case and, therefore, conflict arises which needs to be resolved.

9) Mr. Gourab Banerji, learned Senior Counsel appearing for the respondent gave equally emphatic reply to the aforesaid submissions of Mr. Suri. His first argument was that clauses in Harish Chandra case and the present case were altogether different. Insofar as the instant case is concerned, it was governed by the law laid down in Jayprakash Associates judgment which was in fact a case between the same parties and in that case the Court had, while construing the identically worded clauses, came to the conclusion that the Arbitrators were precluded from granting any interest. His another contention was that there was a difference between the scheme provided under the Arbitration Act, 1940 (hereinafter referred to as the '1940 Act') when contrasted with the 1996 Act. He argued that most of the judgments cited by the appellant including Harish Chandra were under 1940 Act whereas in the instant case award was passed under the 1996 Act. He also referred to certain recent judgments which have been rendered by this Court touching upon this very aspect. The precise manner in which he structured his arguments are recapitulated below:

> 10) In the first instance, he pointed out that even the arbitrators accepted, on the interpretation of GCC Clauses 50 and 51, that these clauses deny interest on the appellant's dues by the respondent due to dispute etc. Notwithstanding the same, the majority opinion awarded the interest relying upon the judgment of this Court in Board of Trustees for the Port of Calcutta. The learned Single Judge of the High Court, while reversing the aforesaid view, pointed out that 1996 Act had altered the position contained in the 1940 Act. Under the new Act, an arbitrator could not award pendente lite interest when there was an express bar against award of such an interest. This legal position is contained in Section 31(7)(a) of the 1996 Act and the legal position stood crystallised in the case of Sayeed Ahmed and Company v. State of Uttar Pradesh & Ors. 4. Therefore, held the learned Single Judge, when Clauses 50 and 51 of GCC imposed a complete bar on arbitral tribunal to award pendente lite interest, the arbitrators had no jurisdiction to award interest. Mr. Banerji submitted that the learned Single Judge even noticed the judgment in Harish Chandra case and

distinguished the same on the ground that it

4 (2009) 12 SCC 26 arose under the 1940 Act. Furthermore, clause 1.9 in Harish Chandra case was indeed restrictive and differed from the wordings of Clauses 50 and 51 of the GCC which were closer to Clause G1.09 in Sayeed Ahmed case. On that basis, Harish Chandra judgment was distinguished which position has been upheld by the Division Bench of the High Court also. Mr. Banerji submitted that by the time Division Bench decided the case in September, 2012, it had the benefit of another judgment of this Court in THDC case which was not only between the same parties but even the clauses in the said case are pari materia with the clauses in the present case.

11) We have considered the respective submissions and have gone through the legal position contained in the case laws cited before us by both the parties.

12) Insofar as power of the arbitral tribunal in granting pre-reference and/or pendente lite interest is concerned, the principles which can be deduced from the various judgments are summed up below:

(a) A Constitution Bench judgment of this Court in the case of Secretary, Irrigation Department, Government of Orissa & Ors. v.

G.C. Roy5 exhaustively dealt with this very issue, namely, power of the arbitral tribunal to grant pre-reference and pendente lite interest. The Constitution Bench, of course, construed the provisions of the 1940 Act which Act was in vogue at that time. At the same time, the Constitution Bench also considered the principle for grant of interest applying the common law principles. It held that under the general law, the arbitrator is empowered to award interest for the pre-reference, pendente lite or post award period. This proposition was culled out with the following reasoning:

"43. The question still remains whether arbitrator has the power to award interest pendente lite, and if so on what principle. We must reiterate that we are dealing with the situation where the agreement does not provide for grant of such interest nor does it prohibit such grant. In other words, we are dealing with a case where the agreement is silent as to award of interest. On a conspectus of aforementioned decisions, the following principles emerge:

(i) A person deprived of the use of money to which he is legitimately entitled has a right to be compensated for the deprivation, call it by any name. It may be called interest, compensation or damages. This basic consideration is as valid for the period the dispute is pending before the arbitrator as it is for the period prior to the arbitrator entering upon the reference. This is the principle of Section 34, Civil Procedure Code and there is no reason or principle to hold otherwise in the case of arbitrator.

(ii) An arbitrator is an alternative form (sic forum) for resolution of disputes arising between the parties. If so, he must have the power to decide all the disputes or

> differences arising between the parties. If the arbitrator has no power to award interest pendente lite, the party

5 (1992) 1 SCC 508 claiming it would have to approach the court for that purpose, even though he may have obtained satisfaction in respect of other claims from the arbitrator. This would lead to multiplicity of proceedings.

(iii) An arbitrator is the creature of an agreement. It is open to the parties to confer upon him such powers and prescribe such procedure for him to follow, as they think fit, so long as they are not opposed to law. (The proviso to Section 41 and Section 3 of Arbitration Act illustrate this point). All the same, the agreement must be in conformity with law. The arbitrator must also act and make his award in accordance with the general law of the land and the agreement.

(iv) Over the years, the English and Indian courts have acted on the assumption that where the agreement does not prohibit and a party to the reference makes a claim for interest, the arbitrator must have the power to award interest pendente lite. Thawardas [Seth Thawardas Pherumal v. Union of India, (1955) 2 SCR 48 : AIR 1955 SC 468] has not been followed in the later decisions of this Court. It has been explained and distinguished on the basis that in that case there was no claim for interest but only a claim for unliquidated damages. It has been said repeatedly that observations in the said judgment were not intended to lay down any such absolute or universal rule as they appear to, on first impression. Until Jena case [(1988) 1 SCC 418 : (1988) 1 SCR 253] almost all the courts in the country had upheld the power of the arbitrator to award interest pendente lite. Continuity and certainty is a highly desirable feature of law.

(v) Interest pendente lite is not a matter of substantive law, like interest for the period anterior to reference (pre- reference period). For doing complete justice between the parties, such power has always been inferred." It is clear from the above that the Court decided to fall back on general principle that a person who is deprived of the use of money to which he is legitimately entitled to, has a right to be compensated for the deprivation and, therefore, such compensation may be called interest compensation or damages.

(b) As a sequitur, the arbitrator would be within his jurisdiction to award pre-reference or pendente lite interest even if agreement between the parties was silent as to whether interest is to be awarded or not.

(c) Conversely, if the agreement between the parties specifically prohibits grant of interest, the arbitrator cannot award pendente lite interest in such cases. This proposition is predicated on the principle that an arbitrator is the creature of an agreement and he is supposed to act and make his award in accordance with the general law of the land and the agreement. This position was made amply clear in G.C. Roy case in the discussion that ensued thereafter:

> "44. Having regard to the above consideration, we think that the following is the correct principle which should be followed in this behalf:

Where the agreement between the parties does not prohibit grant of interest and where a party claims interest and that dispute (along with the claim for principal amount or independently) is referred to the arbitrator, he shall have the power to award interest pendente lite. This is for the reason that in such a case it must be presumed that interest was an implied term of the agreement between the parties and therefore when the parties refer all their disputes — or refer the dispute as to interest as such — to the arbitrator, he shall have the power to award interest.

This does not mean that in every case the arbitrator should necessarily award interest pendente lite. It is a matter within his discretion to be exercised in the light of all the facts and circumstances of the case, keeping the ends of justice in view."

(d) Insofar as 1940 Act is concerned, it was silent about the jurisdiction of the arbitrator in awarding pendente lite interest.

However, there is a significant departure on this aspect insofar as 1996 Act is concerned. This distinction has been spelt out in Sayeed Ahmed case in the following manner:

"Re: Interest from the date of cause of action to date of award

7. The issue regarding interest as noticed above revolves around Clause G1.09 of the Technical Provisions forming part of the contract extracted below:

"G. 1.09. 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 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 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." xx xx xx

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."

13) The aforesaid position is reiterated in Sree Kamatchi Amman Constructions v. Divisional Railway Manager (Works), Palghat & Ors.6 and Union of India v. Bright Power Projects (India) Private Limited7. Later judgment is by a bench of three Judges. This legal position is reiterated in Sri Chittaranjan Maity v. Union of India8 which is authored by one of us (Nazeer, J.). In that case, the Court considered the same very question which falls for determination by us, namely, whether the arbitral tribunal was justified in awarding interest on delayed payments in favour of the

appellant? After noticing that clause 16(2) of GCC in that case bars the payment of interest, it was held that under the 1996 Act, the position wherein is different from 1940 Act, the interest could not be awarded. Following observations from this judgment may be noted:

"16. Relying on a decision of this Court in Ambica Construction v. Union of India [Ambica Construction v. Union of India, (2017) 14 SCC 323] , the learned Senior Counsel for the appellant submits that mere bar to award interest on the amounts payable under the contract would not be sufficient to deny payment on pendente lite interest. Therefore, the arbitrator was justified in awarding the pendente lite interest. However, it is not clear from Ambica Construction [Ambica Construction v. Union of India, (2017) 14 SCC 323] as to whether it was decided under the Arbitration Act, 1940 (for short "the 1940 Act") or under the 1996 Act. It has relied on a judgment of Constitution Bench in State of Orissa v. G.C. Roy [State of Orissa v.

G.C. Roy, (1992) 1 SCC 508] . This judgment was with 6 (2010) 8 SCC 767 7 (2015) 9 SCC 695 8 (2017) 9 SCC 611 reference to the 1940 Act. In the 1940 Act, there was no provision which prohibited the arbitrator from awarding interest for the pre-reference, pendente lite or post-award period, whereas the 1996 Act contains a specific provision which says that if the agreement prohibits award of interest for the pre-award period, the arbitrator cannot award interest for the said period. Therefore, the decision in Ambica Construction [Ambica Construction v. Union of India, (2017) 14 SCC 323] cannot be made applicable to the instant case."

14) In a recent judgment in the case of Reliance Cellulose Products Limited v. Oil and Natural Gas Corporation Limited 9, the entire case law on the subject is revisited and legal position re-emphasised. That was also a case which arose under the 1940 Act. The Court held that under the 1940 Act, an arbitrator has power to grant pre-reference interest under the Interest Act as well as pendente lite and future interest, however, he is constricted only by the fact that an agreement between the parties may contain an express bar to the award of pre-reference and/or pendente lite interest. Further, the Court has evolved the test of strict construction of such clauses, and unless there is a clear and express bar to the payment of interest that can be awarded by an arbitrator, clauses which do not refer to claims before the arbitrators or disputes between parties and clearly bar payment of interest, cannot stand in the way of an arbitrator awarding pre-reference or pendente lite interest. Further, unless 9 (2018) 9 SCC 266 a contractor agrees that no claim for interest will either be entertained or payable by the other party owing to dispute, difference, or misunderstandings between the parties or in respect of delay on the part of the engineer or in any other respect whatsoever, leading the Court to find an express bar against payment of interest, a clause which merely states that no interest will be payable upon amounts payable to the contractor under the contract would not be sufficient to bar an arbitrator from awarding pendente lite interest. Further, the grant of pendente lite interest depends upon the phraseology used in the agreement, clauses conferring power relating to arbitration, the nature of claim and dispute referred to the arbitrator, and on what items the power to award interest has been taken away and for which period. Also, the position under Section 31(7) of the 1996 Act, is wholly different, inasmuch as Section 31(7) of the 1996 Act sanctifies agreements between the parties and states that the moment

the agreement says otherwise, no interest becomes payable right from the date of the cause of action until the award is delivered.

15) After discussing and analysing almost all the judgments on this subject, the legal position is summed up in the following manner:

> "24. A conspectus of the decisions that have been referred to above would show that under the 1940 Act, an arbitrator has power to grant pre-reference interest under the Interest Act, 1978 as well as pendente lite and future interest. However, he is constricted only by the fact that an agreement between the parties may contain an express bar to the award of pre-reference and/or pendente lite interest. Since interest is compensatory in nature and is parasitic upon a principal sum not having been paid in time, this Court has frowned upon clauses that bar the payment of interest. It has therefore evolved the test of strict construction of such clauses, and has gone on to state that unless there is a clear and express bar to the payment of interest that can be awarded by an arbitrator, clauses which do not refer to claims before the arbitrators or disputes between parties and clearly bar payment of interest, cannot stand in the way of an arbitrator awarding pre-reference or pendente lite interest. Thus, when one contrasts a clause such as the clause in Second Ambica Construction case [Ambica Construction v. Union of India, (2017) 14 SCC 323 : (2018) 1 SCC (Civ) 257] with the clause in Tehri Hydro Development Corpn. Ltd. [Tehri Hydro Development Corpn. Ltd. v. Jai Prakash Associates Ltd., (2012) 12 SCC 10 : (2013) 2 SCC (Civ) 122] , it becomes clear that unless a contractor agrees that no claim for interest will either be entertained or payable by the other party owing to dispute, difference, or misunderstandings between the parties or in respect of delay on the part of the engineer or in any other respect whatsoever, leading the Court to find an express bar against payment of interest, a clause which merely states that no interest will be payable upon amounts payable to the contractor under the contract would not be sufficient to bar an arbitrator from awarding pendente lite interest under the 1940 Act. As has been held in First Ambica Construction case [Union of India v. Ambica Construction, (2016) 6 SCC 36 : (2016) 3 SCC (Civ) 36] , the grant of pendente lite interest depends upon the phraseology used in the agreement, clauses conferring power relating to arbitration, the nature of claim and dispute referred to the arbitrator, and on what items the power to award interest has been taken away and for which period. We hasten to add that the position as has been explained in some of the judgments above under Section 31(7) of the 1996 Act, is wholly different, inasmuch as Section 31(7) of the 1996 Act sanctifies agreements between the parties and states that the moment the agreement says otherwise, no interest becomes payable right from the date of the cause of action until the award is delivered."
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> 16) In this whole conspectus and keeping in mind, in particular, that present case is regulated by 1996 Act, we have to decide the issue at hand. At this stage itself, it may be mentioned that in case clauses 50 and 51 of GCC put a bar on the arbitral tribunal to award interest, the arbitral tribunal did not have any jurisdiction to do so. As

> pointed out above, right from the stage of arbitration proceedings till the High Court, these clauses are interpreted to hold that they put such a bar on the arbitral tribunal. Even the majority award of the arbitral tribunal recognised this.

Notwithstanding the same, it awarded the interest by relying upon Board of Trustees for the Port of Calcutta case. The High Court, both Single Bench as well as Division Bench, rightly noted that the aforesaid judgment was under the 1940 Act and the legal position in this behalf have taken a paradigm shift which position is clarified in Sayeed Ahmed and Company case. This rationale given by the High Court is in tune with the legal position which stands crystallised by catena of judgments as noted above.

17) Another reason given by the High Court is equally convincing.

The Clauses 50 and 51 of GCC are pari materia with Clauses 1.2.14 and 1.2.15 of GCC in THDC case. Those clauses have been interpreted by holding that no interest is payable on claim for delayed payment due to the contractor. Same construction adopted in respect of these clauses, which, in fact, is a case between the same parties, is without any blemish.

18) In this backdrop, the only argument of the appellant that remains to be considered is as to whether such a construction is contrary to the judgment in Harish Chandra case.

19) Complete answer to this argument is provided in Reliance Cellulose Products Limited judgment. Following discussion contained therein which discussed THDC judgment would amply demonstrate this:

> "Also, unlike the clause in Tehri Hydro Development Corporation Ltd. (Supra), clause 16 does not contain language which is so wide in nature that it would interdict an arbitrator from granting pendente lite interest. It will be remembered that the clause in Tehri Hydro Development Corportation Ltd. (supra) spoke of no claim for interest being entertained or payable in respect of any money which may be lying with the Government owing to disputes, difference or misunderstanding between the parties and not merely in respect of delay or omission; Further, the clause in Tehri Hydro Development Corporation Ltd. (supra) goes much further and makes it clear that no claim for interest is payable “in any other respect whatsoever.” It is pertinent to mention that the aforesaid judgment also discusses and analysis Harish Chandra case. In the first place, the judgment in Harish Chandra case is under the 1940 Act.
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> More pertinently, this judgment is explained and distinguished in Sayeed Ahmed and Company case in the following paragraphs:
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> "17. The appellant strongly relied upon the decision of this Court in State of U.P. v. Harish Chandra & Co. [(1999) 1 SCC 63] to contend that Clause 1.09 of the contract did not bar the award of interest. The clause barring interest that fell for consideration in that decision was as under: (SCC p. 67, para 9) “1.09. No claim for

delayed payment due to dispute, etc.—No claim for interest or damages will be entertained by the Government with respect to any moneys or balances which may be lying with the Government owing to any dispute, difference; or misunderstanding between the Engineer-in-Charge in making periodical or final payments or in any other respect whatsoever." This Court held that the said clause did not bar award of interest on any claim for damages or for claim for payment for work done. We extract below the reasoning for such decision: (SCC p. 67, para 10) "10. A mere look at the clause shows that the claim for interest by way of damages was not to be entertained against the Government with respect to only a specified type of amount, namely, any moneys or balances which may be lying with the Government owing to any dispute, difference between the Engineer-in-Charge and the contractor; or misunderstanding between the Engineer-in-Charge and the contractor in making periodical or final payments or in any other respect whatsoever. The words 'or in any other respect whatsoever' also referred to the dispute pertaining to the moneys or balances which may be lying with the Government pursuant to the agreement meaning thereby security deposit or retention money or any other amount which might have been with the Government and refund of which might have been withheld by the Government. The claim for damages or claim for payment for the work done and which was not paid for would not obviously cover any money which may be said to be lying with the Government.

Consequently, on the express language of this clause, there is no prohibition which could be culled out against the respondent contractor that he could not raise the claim for interest by way of damages before the arbitrator on the relevant items placed for adjudication." (emphasis supplied)

18. In Harish Chandra [(1999) 1 SCC 63] a different version of Clause 1.09 was considered. Having regard to the restrictive wording of that clause, this Court held that it did not bar award of interest on a claim for damages or a claim for payments for work done and which was not paid. This Court held that the said clause barred award of interest only on amounts which may be lying with the Government by way of security deposit/retention money or any other amount, refund of which was withheld by the Government.

19. But in the present case, Clause G1.09 is significantly different. It specifically provides that no interest shall be payable in respect of any money that may become due owing to any dispute, difference or misunderstanding between the Engineer-in-Charge and contractor or with respect to any delay on the part of the Engineer-in-Charge in making periodical or final payment or in respect of any other respect whatsoever. The bar under Clause G1.09 in this case being absolute, the decision in Harish Chandra [(1999) 1 SCC 63] will not assist the appellant in any manner."

> 20) It is also pertinent to note that the judgment in Sayeed Ahmed and Company distinguishing the restrictive wording in Harish Chandra has been consistently followed by this Court in number of cases thereafter. In this scenario, when we find that Harish Chandra case which is of the vintage of 1940 Act and is distinguished in Sayeed Ahmed and Company coupled with the fact that the ratio of Sayeed Ahmed and Company has been consistently followed, there is no reason to deviate from the construction to Clauses 50 and 51 of the GCC given by the arbitral tribunal in the first instance as well as the High Court.

Above all, these clauses is pari materia with with Clauses 1.2.14 and 1.2.15 of GCC in THDC case which was a judgment between the same parties.

21) Insofar as argument based on the principle of ejusdem generis is concerned, the Division Bench has held that that is not applicable in the present case. We find that it is rightly so held. Ejusdem generis is the rule of construction. The High Court has negated this argument in the following manner:

> "18. The rule of ejusdem generis guides us that where two or more words or phrases which are susceptible of analogous meaning are cupled together, a noscitur a sociis,they are to be understood to mean in their cognate sense and take colour from each other but only if there is a distinct genus or a category. Where this is lacking i.e. unless there is a category, the rule cannot apply." As rightly held, the rule of ejusdem generis would be applied only if there is distinct genus or a category, which is lacking in the instant case. This rule is applicable when particular words pertaining to a clause, category or genus are followed by general words. In such a situation, the general words are construed as limited to things of same kind as those specified. In that sense, this rule reflects an attempt 'to reconcile incompatibility between the specific and general words in view of the other rules of interpretation that all words in a statute are given effect if possible, that a statute is to be construed as a whole and that no words in a statute were presumed to be superfluous'. (See Lokmat Newspapers Pvt. Ltd. v.
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> Shankarprasad10). In fact, construing the similar clause, this Court in the case of Bharat Heavy Electricals Limited v. Globe Hi-
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> Fabs Limited11 has held that rule of ejusdem generis is not applicable inasmuch as:
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> "12. The rule of ejusdem generis has to be applied with care and caution. It is not an inviolable rule of law, but it is only permissible inference in the absence of an indication to the contrary, and where context and the object and mischief of the enactment do not require restricted meaning to be attached to words of general import, it becomes the duty of the courts to give those words their plain and ordinary meaning. As stated by Lord Scarman:

"If the legislative purpose of a statute is such that a statutory series should be read ejusdem generis, so be it, the rule is helpful. But, if it is not, the rule is more likely to defeat than to fulfil the purpose of the statute. The rule like many other rules of statutory interpretation, is a useful servant but a bad master." So a narrow construction on the basis of ejusdem generis rule may have to give way to a broader construction to give effect to the intention of Parliament by adopting a purposive construction.

10 (1999) 6 SCC 275
11 (2015) 5 SCC 718

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15. A word of caution is here necessary. The fact that the ejusdem generis rule is not applicable does not necessarily mean that the prima facie wide meaning of the word "other" or similar general words cannot be restricted if the language or the context and the policy of the Act demand a restricted construction. In the expression "defect of jurisdiction or other cause of a like nature" as they occur in Section 14(1) of the Limitation Act the generality of the words "other cause" is cut down expressly by the words "of a like nature", though the rule of ejusdem generis is strictly not applicable as mention of a single species "defect of jurisdiction" does not constitute a genus. Another example that may here be mentioned is Section 129 of the Motor Vehicles Act which empowers any "police officer authorised in this behalf or other person authorised in this behalf by the State Government" to detain and seize vehicles used without certification of registration or permit. The words "other person" in this section cannot be construed by the rule of ejusdem generis for mention of single species, namely, "police officer" does not constitute a genus but having regard to the importance of the power to detain and seize vehicles it is proper to infer that the words "other person" were restricted to the category of government officers. In the same category falls the case interpreting the words "before filing a written statement or taking any other steps in the proceedings" as they occur in Section 34 of the Arbitration Act, 1940. In the context in which the expression "any other steps" finds place it has been rightly construed to mean a step clearly and unambiguously manifesting an intention to waive the benefit of arbitration agreement, although the rule of ejusdem generis has no application for mention of a single species viz. written statement does not constitute a genus.

16. In the present case we noticed that the clause barring interest is very widely worded. It uses the words "any amount due to the contractor by the employer". In our opinion, these words cannot be read as ejusdem generis along with the earlier words "earnest money" or "security deposit".

22) The upshot of the aforesaid discussion would be to hold that the conclusions of the High Court in the impugned judgment are correct and need no interference. This appeal is accordingly dismissed.

.....J. (A.K. SIKRI) .....J. (S. ABDUL NAZEER) .....J. (M. R. SHAH) NEW DELHI;

FEBRUARY 07, 2019