

North Delhi Municipal Corporation

v.

M/s S.A. Builders Ltd.

(Civil Appeal No. 1878 of 2024)

17 December 2024

[Abhay S. Oka and Ujjal Bhuyan,* JJ.]

Issue for Consideration

Whether the Arbitrator had become *functus officio* after passing of the award dated 16.12.1997 and had no jurisdiction to issue the clarification dated 15.03.2005.

Headnotes[†]

Arbitration and Conciliation Act, 1996 – s.31 and s.33(1)
(a) – Appellant contended that the Arbitrator had become *functus officio* and therefore lacked jurisdiction to issue the clarification:

Held: The interpretation given to Section 33(1) of the 1996 Act and on a cumulative assessment of the attendant facts and circumstances of the case, this Court is of the view that the clarification sought for and issued by the Arbitrator would be covered by the expression *unless another period of time has been agreed upon by the parties* appearing in Section 33 (1) of the 1996 Act – This is a case where court had permitted the respondent to seek clarification from the Arbitrator beyond the initial period of 30 days whereafter the appellant fully participated in the clarificatory proceeding – Therefore, the present case would be covered by the above expression – In the circumstances, contention of the appellant that the Arbitrator had become *functus officio* and therefore lacked jurisdiction to issue the clarification cannot be accepted and is thus rejected – That apart, it is not the case of the appellant that the interest portion is covered by the contract agreement between the parties – In the absence thereof, Section 31(7)(a) as well as Section 31(7)(b) of the 1996 Act would have their full effect – The sum awarded would mean the principal amount plus the interest awarded from the date of cause of action upto the date of the award – Thereafter, as per Section 31(7)(b) of the 1996 Act, the sum (principal plus interest) would carry interest

* Author

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@ 18% from the date of the award to the date of payment – This would be consistent with the law laid down by this Court in *M/s. Hyder Consulting (UK) Ltd.* [Paras 59, 60]

Arbitration and Conciliation Act, 1996 – s.33(1) – Correction and interpretation of award; additional award:

Held: As per sub-Section (1), within 30 days from the date of receipt of the arbitral award, a party with notice to the other party, may request the arbitral tribunal to correct any computation errors, any clerical or typographical errors or any other errors of a similar nature occurring in the award – Further, if the parties agree, a party with notice to the other party, may request the arbitral tribunal to give an interpretation of a specific point or part of the award – The period of 30 days contemplated under sub-Section (1) may stand extended to another period of time if agreed upon by the parties – Therefore, ordinarily the time limit for correction of errors or for interpretation of a specific point or part of the award is 30 days from the date of receipt of the arbitral award – However, the limitation of 30 days can be waived for another period of time, if agreed upon by the parties – Question for consideration is what would be the contours of the expression *unless another period of time has been agreed upon by the parties*, as appearing in sub-Section (1) of Section 33. [Para 45.1]

Case Law Cited

M/s. Hyder Consulting (UK) Ltd. v. Governor, State of Orissa [2014] 14 SCR 1029 : (2015) 2 SCC 189 – relied on.

State of Haryana v. S.L. Arora [2010] 2 SCR 297 : (2010) 3 SCC 690; *Gyan Prakash Arya v. Titan Industries Ltd.* [2021] 11 SCR 1 : (2023) 1 SCC 153; *Harshad Chiman Lal Modi v. DLF Universal Ltd.* [2005] Supp. 3 SCR 495 : (2005) 7 SCC 791; *Mohanlal Goenka v. Benoy Kishna Mukherjee* [1953] 1 SCR 377 : (1952) 2 SCC 648; *Gas Authority of India Limited v. Ketri Construction (I) Limited* [2007] 6 SCR 439 : (2007) 5 SCC 38; *Delhi Airport Metro Express Private Limited v. Delhi Metro Rail Corporation* [2022] 3 SCR 716 : (2022) 9 SCC 286; *UHL Power Company Limited v. State of Himachal Pradesh* [2022] 1 SCR 1 : (2022) 4 SCC 116; *Delhi Airport Metro Express Private Limited v. Delhi Metro Rail Corporation* [2022] 3 SCR 716 : (2022) 9 SCC 286; *Morgan Securities & Credits (P) Ltd. v. Videocon Industries Ltd.* [2022] 9 SCR 819 : (2023) 1 SCC 602 – referred to.

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Ircon International Ltd. v. Budhiraja Mining & Construction Ltd.,
2007(4) Arb. LR 159 (Delhi) – referred to.

List of Acts

Arbitration and Conciliation Act, 1996; Arbitration Act, 1940; Interest Act, 1978.

List of Keywords

Section 33 of the Arbitration and Conciliation Act, 1996; Correction of award; Interpretation of award; Arbitral award; Clerical error; Typographical error; Arbitral Tribunal; *Functus Officio*; Clarification; Clarificatory proceedings; Lack of jurisdiction; Interest portion; Interest awarded; Date of award; Date of payment.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1878 of 2024

From the Judgment and Order dated 01.07.2019 of the High Court of Delhi at New Delhi in EFAOS No. 17 of 2017

Appearances for Parties

Ms. Madhavi Divan, Sr. Adv., Amol Chitale, Nirnimesh Dube, Sunil Goel, Ankur S. Kulkarni, Susheel Joseph Cyriac, Ms. Uditha Chakravarthy, Ms. Aishani Narayan, Ms. Priya S. Bhalerao, Varun Kanwal, M/s. Lex Regis Law Offices, Advs. for the Appellant.

C Aryama Sundaram, Sr. Adv., Tarun Gupta, Abhishek Gupta, Ms. Rohini Musa, Zafar Wayat, Raj Sudhakar Yadav, Atul Kumar, Yatinder Chaudhary, Davinder Singh Khurana, Manish Bansal, Advs. for the Respondent.

Judgment / Order of the Supreme Court**Judgment**

Ujjal Bhuyan, J.

Heard learned counsel for the parties.

2. This civil appeal by special leave is directed against the impugned order dated 01.07.2019 passed by a Division Bench of the High Court

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of Delhi at New Delhi ('High Court') disposing of EFA(OS) No. 17/2017 and C.M. No. 20662/2017 (*North Delhi Municipal Corporation Vs. M/s. S A Builders Ltd*).

3. By the impugned order dated 01.07.2019, the Division Bench held that this Court *vide* the order dated 12.03.2015 had directed the High Court to decide the issue of interest component payable to the respondent in accordance with the law laid down in *M/s. Hyder Consulting (UK) Ltd. Vs. Governor, State of Orissa*¹ and not in accordance with the law laid down in *State of Haryana Vs. S.L. Arora*,² declaring that the matter relating to amount payable to the respondent had attained finality and could not be interfered with. The Division Bench set aside that part of the order of the learned Single Judge dated 19.04.2017 passed in E.A. (OS) No. 34/2016 pertaining only to the calculations and permitted both the parties (appellant and respondent) to make submissions before the learned Single Judge restricted to the quantum of the amount payable to the respondent. The appeal and the miscellaneous application were disposed of with the observation that learned Single Judge would decide the amount payable by the appellant to the respondent after hearing both the sides.
4. At the outset, it would be appropriate to advert to the relevant facts having a material bearing on the *lis*.

Facts

5. Respondent was awarded a contract work relating to *construction of approaches to flyover at the level crossing on New Rohtak Road with clover-leaf slip road and service road etc.* by the appellant. A contract agreement was entered into between the parties in this regard on 11.11.1983. The work however could not be completed even beyond the stipulated date of completion till March, 1990 and, therefore, the work had to be closed in an incomplete form. The main reason for closing the work was non-availability of site.
 - 5.1. The last payment to the tune of Rs. 4,71,48,122.00 was made to the respondent on 09.02.1988. Thereafter, no payments were

1 (2015) 2 SCC 189

2 (2010) 3 SCC 690

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made to the respondent for the work done upto March, 1990 when the contract was closed. Respondent submitted its final bill which the appellant failed to pay. As a result, dispute arose between the parties.

6. Thereafter, respondent filed an application under Section 20 of the Arbitration Act, 1940 before the High Court seeking appointment of an arbitrator to arbitrate the dispute between the parties. High Court appointed Sh. S.P. Rai, Ex-Member(Personnel), Postal Services Board and Additional Secretary to the Government of India, Ministry of Communications, as the sole Arbitrator. It may be mentioned that on the consent of both the parties, the arbitration proceedings were carried out in terms of the Arbitration and Conciliation Act, 1996 whereafter award was passed by the sole Arbitrator on 16.12.1997. Learned Arbitrator awarded various sums under different heads out of the 26 claims, while rejecting a few of the claims of the respondent. Counter claim of the appellant was also allowed to a limited extent under three heads. After adjusting the two, an amount of Rs. 1,70,70,720.80 was awarded to the respondent with simple interest @ 18% per annum on the award amount w.e.f. 01.04.1990 upto the date of actual payment except on claim No. 23(b) which related to expenses incurred by the respondent on account of bank guarantee commission, margin money etc. for keeping the bank guarantee alive.
 - 6.1. Thereafter, the sole Arbitrator issued a corrigendum dated 18.12.1997 pointing out certain typographical errors in the award, whereafter it was mentioned that the net amount payable to the respondent would be Rs. 1,70,40,720.80 instead of Rs. 1,70,70,720.80, further clarifying that the above correction would form part of the award dated 16.12.1997.
7. Respondent filed an execution petition being Ex.P. No. 99/1998 under Section 36 of the Arbitration and Conciliation Act, 1996 (briefly 'the 1996 Act' hereinafter) before the Single Bench of the High Court for execution of the arbitral award. Learned Single Judge *vide* the order dated 26.08.2004 framed the following issue for consideration:

Whether post award interest under Section 31(7) of the Arbitration and Conciliation Act, 1996 would be calculated on the principal sum adjudged or would it be calculated on

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the principal sum plus interest on the principal sum which has accrued from the date of cause of action to date of passing of award, as under the new 1996 Act, award is enforced as a decree of the court.

8. Simultaneously, appellant also filed before the Single Bench a petition under Section 34 of the 1996 Act challenging the award dated 16.12.1997. By order dated 08.01.2002, the petition of the appellant under Section 34 of the 1996 Act was dismissed.
9. Appellant then preferred an appeal under Section 37 of the 1996 Act before the Division Bench assailing the order dated 08.01.2002 being FAO(OS) No. 89/2002. The said appeal was, however, dismissed by the Division Bench of the High Court by the judgment and order dated 14.03.2002.
10. Being aggrieved by the order dated 14.03.2002, appellant filed a special leave petition before this Court being SLP(C) No. 7474/2002. Though this Court had initially issued notice and granted limited stay *qua* execution of the award *vis-à-vis* claim Nos. 22, 25 and 26, the said special leave petition was subsequently dismissed by this Court on 03.02.2010.
11. Reverting back to the execution petition filed by the respondent, learned Single Judge *vide* the order dated 26.08.2004 after framing the issue as above expressed the view that post-award interest under Section 31(7) of the 1996 Act affects a large volume of litigation before the court. Therefore, in order to avoid proliferation of litigation and unnecessary appeals, learned Single Judge referred the matter to the Division Bench to clarify the position in this regard.
12. When the matter was placed before the Division Bench, respondent sought leave to approach the learned Arbitrator for seeking the clarification as to whether the interest awarded in the award was under Section 31(7)(a) of the 1996 Act or not? Division Bench *vide* the order dated 03.01.2005 granted such permission to the respondent with the clarification that the permission so granted should not be understood to contain any expression of opinion of the Division Bench about payment of interest under Section 31(7)(a) or Section 31(7)(b) of the 1996 Act.
13. Pursuant thereto, an application was filed by the respondent before the learned Arbitrator seeking clarification in terms of the order dated

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03.01.2005. It was contended on behalf of the respondent that though under sub-Section (7) of Section 31 of the 1996 Act interest can be awarded, Arbitral Tribunal, however, had not clarified as to whether the said interest was awarded under clause (a) of sub-Section (7) of Section 31 of the 1996 Act or not. Appellant filed objection to such application primarily contending on merit that no such clarification was warranted in the facts and circumstances of the case.

14. Learned Arbitrator after hearing the parties issued a clarification on 15.03.2005 *vis-à-vis* payment of interest. After analysing the provisions of both Section 31(7)(a) and Section 31(7)(b) of the 1996 Act, learned Arbitrator clarified that post-award interest shall be payable on the awarded sum i.e. on the amount of claim awarded plus the interest for the pre-reference period as well as interest *pendente lite* from the date of the award till it is paid @ 18% per annum.
15. It may be mentioned that against the order of the Division Bench of the High Court dated 03.01.2005 whereby the Division Bench had granted permission to the respondent to approach the Arbitral Tribunal for clarification, appellant had filed special leave petition before this Court being SLP(C) CC No. 5011/2007 and by order dated 09.07.2007, the said special leave petition was dismissed.
16. Against the clarification of the learned Arbitrator dated 15.03.2005, an application was filed by the appellant before the Single Bench being EA(OS) No. 270/2005 in the pending Ex.P. No. 99/1998 for setting aside the said clarification. By the order dated 19.02.2008, learned Single Judge, after referring to Section 32 of the 1996 Act and a decision of the Delhi High Court in *Ircon International Ltd. Vs. Budhiraja Mining & Construction Ltd.*,³ held that learned Arbitrator had become *functus officio* and, therefore, had no authority to entertain the application for clarification. After 30 days of the award, learned Arbitrator had no authority to make any change in the award. The earlier order of the learned Arbitrator awarding simple interest @ 18% per annum on the awarded amount from 01.04.1990 till the date of actual payment takes care of the interest part. Learned Single Judge, therefore, set aside the clarification issued by the learned

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Arbitrator, declaring that the award dated 16.12.1997 passed earlier and the interest granted thereunder would hold the field and would be payable by the judgment debtor (appellant) to the judgment holder (respondent).

17. According to the appellant, it paid the interest component and submitted before the executing court that the decree stood satisfied. Learned Single Judge *vide* the order dated 08.10.2010 disposed of the execution petition being Ex.P. No. 99/1998 holding that the decree stood satisfied.
18. Against the order dated 19.02.2008, respondent preferred an appeal before the Division Bench being EFA(OS) No. 16/2008. Division Bench *vide* the order dated 23.02.2012 referred to the decision of this Court in *S.L. Arora* (supra) and held that the settled legal position that prevailed was that compound interest under the 1996 Act could not be granted in view of the decision in *S.L. Arora* (supra). Resultantly, the amount covered by the compound interest was not payable. It was observed that in view of the settled legal position that respondent was not entitled to compound interest as per the decision in *S.L. Arora* (supra), the appeal had become an academic exercise. Division Bench therefore declined to examine the reasoning of the learned Single Judge while passing the order dated 19.02.2008. The appeal of the appellant was dismissed in the aforesaid manner and not on the basis of the reasons given by the learned Single Judge.
19. Assailing the order dated 23.02.2012 of the Division Bench, respondent preferred SLP(C) No. 18614/2012. This Court passed an order on 13.07.2012 to tag the aforesaid SLP with Civil Appeal No. 3148 of 2012 (*M/s. Hyder Consulting (UK) Ltd. Vs. Governor, State of Orissa Thr. Chief Engineer*).
20. On leave being granted, SLP(C) No. 18614/2012 came to be registered as Civil Appeal No. 2841 of 2015. Civil Appeal No. 3148 of 2012 (*M/s. Hyder Consulting (UK) Ltd. Vs. Governor, State of Orissa*) came to be disposed of alongwith Civil Appeal No. 2841 of 2015 (*M/s. S.A. Builders Vs. North Delhi Municipal Corporation*) and other connected appeals *vide* the order dated 12.03.2015. This Court referred to its earlier decision in *M/s. Hyder Consulting (UK) Ltd.* (supra) and held that the decision in *S.L. Arora* (supra) does not lay down the correct law. Computation of the amount has to be done by the executing court on the basis of the principles stated in

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M/s. Hyder Consulting (UK) Ltd. (supra). In *M/s. Hyder Consulting (UK) Ltd.* (supra), it has been held that the sum directed to be paid by the award would mean a sum inclusive of the principal amount adjudged and the interest thereon. Therefore, the post-award interest that may be awarded would be on the principal amount as well as on the interest on the principal amount which together would constitute the sum awarded.

21. Civil Appeal No. 2841 of 2015 i.e. the civil appeal of the respondent was allowed by directing that the interest component payable to the respondent shall be computed in accordance with the law laid down in *M/s. Hyder Consulting (UK) Ltd.* (supra) and not in accordance with *S.L. Arora* (supra) since *S.L. Arora* (supra) has been overruled in *M/s. Hyder Consulting (UK) Ltd.* (supra). Resultantly, the decisions of the Single Bench as affirmed by the Division Bench were set aside; respondent was given liberty to seek execution of the award in terms of *M/s. Hyder Consulting (UK) Ltd.* (supra).
22. It is stated by the appellant that in the course of an audit, it transpired that it had made excess payment to the respondent due to an error in calculation of interest. Therefore, appellant filed an application being EA(OS) No. 364/2013 in the disposed of execution petition being Ex. P. No. 99/1998 praying for a direction for refund of the excess payment which was quantified at Rs. 1,54,19,281.00 alongwith interest @ 18% from 09.09.2010 till the date of payment. Thereafter, appellant filed another application being EA(OS) No. 25/2015 for amending the earlier application being EA(OS) No. 364/2013. It was stated that the refund claim amount was Rs. 5,45,41,756.00 as on 09.09.2010. In the proceedings held on 10.03.2017, learned Single Judge *prima facie* held that respondent would be entitled to interest on the pre-award interest. Appellant was directed to verify the calculation of interest and to deposit the said amount before the High Court which would be without prejudice to the rights and contentions of the appellant.
23. Respondent filed a fresh application before the Single Bench being EA(OS) No. 34/2016 claiming a sum of Rs. 9,10,43,399.53 as on 31.12.2015 from the appellant in view of the order of this Court dated 12.03.2015 passed in C.A. No. 2841 of 2015.
24. Appellant also filed an application being EA(OS) No. 166/2017 before the executing court for recall of the direction for deposit of

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the additional interest. Learned Single Judge *vide* the judgment and order dated 19.04.2017 held that the arbitral award dated 16.12.1997 has to be considered in the light of the decision of this Court in *M/s. Hyder Consulting (UK) Ltd.* (supra). On the contention of the appellant that the learned Arbitrator had no jurisdiction to issue such clarification as the Arbitral Tribunal had become *functus officio*, the same was rejected by the learned Single Judge on the ground that such clarification was obtained in terms of the leave granted by the Division Bench; the special leave petition filed by the appellant against the order of the Division Bench was dismissed by this Court; further, the decision of the Single Bench dated 19.02.2008 setting aside the clarification issued by the learned Arbitrator as upheld by the Division Bench was expressly set aside by this Court. Therefore, learned Single Judge held that respondent would be entitled to post-award interest not only on the claims as awarded [except claim No. 23(b)] but also on the pre-award interest. The quantum of pre-award interest would be included in the amount awarded and that the post-award interest would run on the said composite amount. Thus, the amount payable by the appellant to the respondent would have to be computed on the said basis. Accordingly, the appellant was directed to verify the calculations and to pay the amount to the respondent within four weeks.

25. The aforesaid judgment and order of the learned Single Judge dated 19.04.2017 was assailed by the appellant in appeal before the Division Bench being EFA(OS) No.17/2017. Division Bench *vide* the order dated 26.07.2017 noted that an amount of Rs. 5,14,44,393.00 was outstanding, due to be paid by the appellant to the respondent. Accordingly, without prejudice to the respective rights and contentions of the parties, a direction was issued to the appellant to deposit a sum of Rs. 5,14,44,393.00 before the High Court on or before 06.09.2017 to be released in favour of the respondent, subject to offering of solvent security.
26. In terms of the aforesaid direction, appellant deposited on 04.09.2017 a sum of Rs. 5,14,44,393.00 before the High Court by way of a demand draft dated 30.08.2017.
27. Thereafter, an application was filed before this Court by the appellant for seeking clarification of the order dated 12.03.2015 passed in C.A. No. 2541 of 2015. It was contended therein that the civil appeal of

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the respondent was decided on the principles of law laid down in *M/s. Hyder Consulting (UK) Ltd.* (supra) but the main issue that learned Arbitrator lacked jurisdiction to entertain the application for clarification and then to pass a clarificatory order was not gone into.

28. However, the aforesaid application being M.A. No. 927 of 2018 was withdrawn by the appellant and was disposed of as such *vide* the order dated 13.04.2018.
29. Division Bench thereafter passed the impugned order dated 01.07.2019 rejecting the contention of the appellant that the learned Arbitrator had no jurisdiction because by the order dated 12.03.2015, this Court had directed that the High Court would decide the issue of interest component payable to the respondent in accordance with the law laid down in *M/s. Hyder Consulting (UK) Ltd.* (supra) and not in accordance with *S.L. Arora* (supra). That apart, such a contention was not available to the appellant at the stage of execution proceeding. The matter had attained finality upto the level of this Court and, thus, cannot be interfered with on merit. Therefore, with the consent of the parties, Division Bench set aside the operative part of the order dated 19.04.2017 pertaining only to the calculations and permitted both the parties to make submissions restricted to the quantum of the amount payable to the respondent. Learned Single Judge was requested to decide the amount payable to the respondent after hearing both the sides.

Pleadings

30. According to the appellant, learned Arbitrator had become *functus officio* after passing of the award dated 16.12.1997. Therefore, he had no jurisdiction to issue the clarification dated 15.03.2005.
 - 30.1. In the garb of the clarification dated 15.03.2005, learned Arbitrator had substantially modified the award dated 16.12.1997. Appellant's challenge to the same on the ground that learned Arbitrator had no jurisdiction to issue the clarification since he had become *functus officio* was upheld by the learned Single Judge *vide* the order dated 19.02.2008. Challenge to the aforesaid order by the respondent was rejected by the Division Bench *vide* the order dated 23.02.2012. However, Division Bench did not examine the question of jurisdiction but applied the ratio of *S.L. Arora* (supra) while dismissing the appeal of

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the respondent though this was the issue before the Division Bench. When the aforesaid order of the Division Bench was questioned before this Court by the respondent in C.A. No. 2841 of 2015, the same was allowed *vide* the order dated 12.03.2015 relying on the decision of this Court in *M/s. Hyder Consulting (UK) Ltd.* (supra) which had overruled the earlier decision in *S.L. Arora* (supra). This Court also did not examine the primary question as to whether the learned Arbitrator had become *functus officio* while issuing the clarification.

- 30.2. When the appellant had earlier questioned the award under Section 34 of the 1996 Act and thereafter under Section 37 of the 1996 Act, the clarification dated 15.03.2005 was not in existence. Therefore, appellant could challenge the same only in the execution proceeding. Though the learned Single Judge had upheld the objection of the appellant and had set aside the clarification, Division Bench of the High Court while upholding the decision of the learned Single Judge and this Court while setting aside both the orders of the learned Single Judge and the Division Bench, did not examine this aspect of the matter.
- 30.3. It is also contended that learned Arbitrator had terminated the arbitral proceedings *vide* the award dated 16.12.1997 followed by the corrigendum dated 18.12.1997. No application having been moved for rectification of any clerical or calculation error within 30 days in terms of Section 33 of the 1996 Act and the respondent having not challenged the award under Section 34 of the said Act, learned Arbitrator could not have introduced any correction to the award, that too, in the manner in which it has been done. In the award, he had granted simple interest whereas by way of clarification, the same was changed to compound interest.
- 30.4. It is settled law that Section 33 is the only provision in the 1996 Act which allows correction of clerical errors. In the garb of clarification or correcting clerical errors, learned Arbitrator introduced substantial change in the award. In any view of the matter, the power under Section 33 of the 1996 Act could not have been exercised by the learned Arbitrator more than 6 years after passing of the award.

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31. Respondent in its counter affidavit has stated that the special leave petition out of which the present civil appeal arises is totally misconceived and is an abuse of the process of law.
- 31.1. Learned Arbitrator *vide* the award dated 16.12.1997 had awarded a sum of Rs. 1,70,70,720.80 (corrected to Rs. 1,70,40,720.80) alongwith interest @ 18% per annum in favour of the respondent. In the course of the execution proceeding, the executing court i.e. the learned Single Judge referred the matter to the Division Bench on the question as to whether under Section 31(7) of the 1996 Act, post-award interest would be on the principal sum adjudged or would be on the principal sum plus interest on the principal sum which had accrued from the date of the cause of action to the date of passing of the award. Division Bench permitted the respondent to seek clarification from the learned Arbitrator. This order was challenged by the appellant before this Court by way of a special leave petition. However, the said special leave petition was dismissed. It was, thereafter, that the clarification was issued by the learned Arbitrator. Appellant never challenged the clarified award under Section 34 of the 1996 Act; instead approached the executing court. The executing court i.e. learned Single Judge had erroneously set aside the clarification. Appeal filed by the respondent against such order was dismissed by the Division Bench. When the respondent had approached this Court by filing special leave petition, a three-Judge Bench of this Court had already decided the issue in *M/s. Hyder Consulting (UK) Ltd.* (supra). In the said decision, this Court held that an arbitrator has the power to grant post-award interest under Section 31(7) of the 1996 Act on the sum comprising of the principal plus interest on the principal which has accrued from the date of cause of action to the date of passing of the award. Leave was granted whereafter the civil appeal of the respondent was allowed by this Court. Following the law laid down in *M/s. Hyder Consulting (UK) Ltd.* (supra), the orders of Single Bench and Division Bench were set aside. Liberty was granted to the respondent to seek execution as per the law in *M/s. Hyder Consulting (UK) Ltd.* (supra).
- 31.2. In the above context, it is contended on behalf of the respondent that the clarification issued by the learned Arbitrator stood affirmed by this Court. Therefore, post the decision of this

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Court, it is not open to the appellant to again question the clarification on the ground that learned Arbitrator had no jurisdiction to issue such clarification.

- 31.3. Notwithstanding the same, appellant had filed M.A. No. 927/2018 before this Court seeking clarification of the order dated 12.03.2015 passed in the disposed of civil appeal which was decided in favour of the respondent. Same grounds *qua* lack of jurisdiction on the part of the learned Arbitrator were raised in the miscellaneous application as are being raised now. The miscellaneous application was extensively argued before this Court. It was orally observed by this Court during the hearing that the clarification was in consonance with the law laid down by the three-Judge Bench of this Court in *M/s. Hyder Consulting (UK) Ltd.* (supra) and was on the verge of dismissing the miscellaneous application. It was at that stage that learned counsel for the appellant sought leave of this Court to withdraw the miscellaneous application and accordingly, the same was disposed of as withdrawn. However, no liberty was granted to the appellant to reargue the said issue again in any other proceeding. That being the position, appellant is estopped from raising up the said issue again before this Court.
- 31.4. It is contended that learned Arbitrator was well within his powers under Section 33 of the 1996 Act to issue the clarification which has now attained finality.
- 31.5. In that view of the matter, the civil appeal being devoid of any merit should be dismissed.

Submissions

32. Ms. Madhavi Divan, learned senior counsel for the appellant, at the outset, submitted that the clarification of the learned Arbitrator dated 15.03.2005 is a nullity in the eyes of law. Referring to the final award dated 16.12.1997, learned senior counsel submits that learned Arbitrator had awarded simple interest @ 18% per annum from the date of the cause of action i.e. 01.04.1990 till the date of actual payment which includes the post-award period as well. She submits that since the award provided for post-award interest, provisions of Section 31(7)(b) of the 1996 Act would not come into play.

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- 32.1. This position is clear and unambiguous. Notwithstanding the same, after a period of about 8 years, respondent, at the stage of execution proceeding, made a request before the Division Bench of the High Court for clarification from the learned Arbitrator as to whether the interest was awarded under Section 31(7) of the 1996 Act or not. Without expressing any opinion on the said issue, Division Bench *vide* the order dated 03.01.2005 permitted the respondent to approach the learned Arbitrator for clarification. Though this decision of the Division Bench was challenged before this Court by the appellant by way of special leave petition, the same was dismissed.
- 32.2. Learned senior counsel submits that the clarification sought for by the respondent from the learned Arbitrator was that in the award it was not specifically mentioned that interest was granted under sub-Section(7) of Section 31 of the 1996 Act. Highlighting this aspect, learned senior counsel submits that learned Arbitrator was requested only to specifically mention whether the interest was awarded under Section 31(7) of the 1996 Act or not.
- 32.3. She further submits that in the clarificatory proceedings before the learned Arbitrator, it was specifically urged on behalf of the appellant that the learned Arbitrator had awarded past, *pendente lite* and future interest in terms of Section 31(7) of the 1996 Act. However, in the garb of issuing a clarification, learned Arbitrator fundamentally altered the award resulting in heavy financial burden on the appellant.
- 32.4. Therefore, learned Arbitrator had transgressed the scope of clarification sought for by the respondent, much beyond the scope of Section 33(1)(a) of the 1996 Act.
- 32.5. Learned senior counsel in support of her above contention has placed reliance on the decision of this Court in *Gyan Prakash Arya Vs. Titan Industries Ltd.*,⁴ more particularly on paragraph 13 thereof.
- 32.6. Ms. Divan vehemently argued that under the 1996 Act the arbitration proceedings came to be terminated upon making

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of the award under Section 32 thereof. Any fresh award beyond the four corners of Section 33 of the said Act is barred and would be a nullity. It is a case of lack of subject-matter jurisdiction and, therefore, the clarification is *non est* in the eyes of law. In this connection, she has referred to a decision of this Court in *Harshad Chimani Lal Modi Vs. DLF Universal Ltd.*,⁵ more particularly to paragraphs 30 to 33 thereof. Any order passed by a tribunal lacking inherent jurisdiction would be *coram non judice*. Such an order would be a nullity and is *non est*. The same can be questioned at any stage i.e. at the stage of execution or even in a collateral proceeding.

- 32.7. Proceeding further, learned senior counsel submits that this Court never had the opportunity in the earlier proceedings to examine the issue as to whether learned Arbitrator had acted without jurisdiction while issuing the clarification which resulted in modifying the original award. Therefore, the said issue may be examined and the civil appeal should be allowed.
- 32.8. Finally, learned senior counsel referred to the decision of this Court in *M/s. Hyder Consulting (UK) Ltd.* (supra) and submits that in that case this Court had clarified the expression '*the arbitral tribunal may include in the sum, for which the award is made*', occurring in Section 31(7)(a) of the 1996 Act, holding that the sum may include the principal amount and the interest accrued thereon and, therefore, grant of interest on interest or compound interest is permissible under Section 31(7)(b) of the said Act. She asserts that *M/s. Hyder Consulting (UK) Ltd.* (supra) is not an authority for the proposition that where the arbitrator had exercised his jurisdiction not to grant compound interest, even then such compound interest ought to be granted or is mandated to be granted. On the contrary, *M/s. Hyder Consulting (UK) Ltd.* (supra) recognises that such interest may be contained in the 'sum' or may not be contained in the said 'sum'. According to her, it would be a complete absurdity if *M/s. Hyder Consulting (UK) Ltd.* (supra) is interpreted to mean that where interest on interest has not been granted or interest is not contained in the sum, it should be superimposed on an

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existing award. Seen in the above backdrop, the direction of this Court to compute the interest amount, in accordance with the law laid down in *M/s. Hyder Consulting (UK) Ltd.* (supra), cannot be interpreted to mean that compound interest must be granted where it has not been granted in the first place.

- 32.9. She, therefore, submits that the impugned order of the Division Bench of the High Court is required to be set aside and the entire controversy is required to be given a *quietus*.
33. Mr. C. Aryama Sundaram, learned senior counsel representing the respondent at the outset submits that the primary issue raised by the appellant in the present proceeding i.e. whether the Arbitrator had become *functus officio* and thus had no jurisdiction to issue the clarification dated 15.03.2005, was expressly raised by the appellant and decided in favour of the respondent by this Court on three earlier occasions. Firstly, the Division Bench of the High Court *vide* the order dated 03.01.2005 had permitted the respondent to approach the Arbitral Tribunal for seeking clarification. In the special leave petition filed by the appellant before this Court assailing the aforesaid order of the Division Bench, appellant had specifically challenged not only the power of the High Court to refer the matter to the learned Arbitrator for clarification but also the very jurisdiction of the learned Arbitrator to issue such clarification. The said SLP was dismissed by this Court *vide* the order dated 09.07.2007. Secondly, the clarification dated 15.03.2005 of the learned Arbitrator was challenged by the appellant by filing objection in the pending execution proceeding. The challenge was made on the ground that the learned Arbitrator had become *functus officio* and thus had no authority to issue any clarification. Learned Single Judge had set aside the clarification of the learned Arbitrator by accepting the contention of the appellant which order was upheld by the Division Bench. Special leave petition filed by the respondent against the aforesaid order of the Division Bench was allowed by this Court *vide* the order dated 12.03.2015; judgments of the learned Single Judge as well as of the Division Bench of the High Court whereby the clarification issued by the learned Arbitrator was set aside were reversed by this Court *vide* the order dated 12.03.2015. Thirdly, appellant had filed a miscellaneous application before this Court seeking clarification of the aforesaid order dated 12.03.2015. In the said application, it was specifically pleaded that the order dated 12.03.2015 only considered the issue of interest:

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whether governed by *S.L. Arora* (supra) or by *M/s. Hyder Consulting (UK) Ltd.* (supra) and that other issues contained in the order of the learned Single Judge dated 19.02.2008 were not considered by this Court. After arguing the miscellaneous application at considerable length, appellant unconditionally withdrew the same when it was about to be dismissed. Mr. Sundaram submits that when an objection is raised but not pressed, it must be taken to have been impliedly overruled. Therefore, the party that had raised objection earlier would be precluded from raising the same again in view of the bar of *res judicata*. Thus, appellant is debarred from raising the same issue again and again (in this case for the fourth time).

- 33.1. Learned senior counsel submits that the principle of constructive *res judicata* is applicable to execution proceeding as well and in this connection, relies upon a decision of this Court in *Mohanlal Goenka Vs. Benoy Kishna Mukherjee*.⁶
- 33.2. He also submits that when the respondent had filed application before the learned Arbitrator for clarification on the question of interest upon permission being granted by the Division Bench of the High Court, appellant did not raise any objection before the learned Arbitrator as to its jurisdiction to issue such clarification or that the learned Arbitrator had become *functus officio*. Referring to the decision of this court in *Gas Authority of India Limited Vs. Ketu Construction (I) Limited*,⁷ he submits that if objection as to jurisdiction is not raised before the Arbitral Tribunal, the same cannot be allowed to be raised later in subsequent proceedings.
- 33.3. Proceeding further, Mr. Sundaram, learned senior counsel submits that after the learned Arbitrator had issued the clarification dated 15.03.2005, no petition was filed by the appellant under Section 34 of the 1996 Act. Therefore, appellant had consciously waived off its right to challenge the said clarification which has thus become final.
- 33.4. Referring to the decision of this Court in *M/s. Hyder Consulting (UK) Ltd.* (supra), learned senior counsel submits that this

6 (1952) 2 SCC 648

7 (2007) 5 SCC 38

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Court in the aforesaid decision has held that the moment the arbitrator awards *pendente lite* interest under Section 31(7) (a) of the 1996 Act, the same automatically merges with the principal amount and becomes part of the 'sum' awarded. This means that there is no requirement of the arbitrator specifically mentioning in the award that the *pendente lite* interest would merge with the principal or that it would bear future interest; rather, in view of the language used in Section 31(7)(b) of the 1996 Act, the *pendente lite* interest automatically merges with the principal so as to arrive at the 'sum' for the purpose of calculation of future interest. Clarification given by the learned Arbitrator is completely in consonance with the law laid down by this Court in *M/s. Hyder Consulting (UK) Ltd.* (supra). A bare reading of the original award dated 16.12.1997 conveys the same meaning. Therefore, it cannot be said that the learned Arbitrator had made any modification of the award or had passed a completely new award. It was purely and simply a clarification of what was awarded.

- 33.5. Learned senior counsel for the respondent submits that this Court *vide* the order dated 12.03.2015 held that the interest component shall be calculated in accordance with the law laid down in *M/s. Hyder Consulting (UK) Ltd.* (supra). In the execution proceeding, respondent had lodged claim strictly in accordance with the law laid down in *M/s. Hyder Consulting (UK) Ltd.* (supra). This decision has been explained and reiterated by this Court in the case of *Delhi Airport Metro Express Private Limited Vs. Delhi Metro Rail Corporation*.⁸ This Court categorically held that in view of *M/s. Hyder Consulting (UK) Ltd.* (supra), the amount awarded under Section 31(7) (a) would include the principal amount plus the interest amount *pendente lite*. It was further held that the interest calculated as per Section 31(7)(b) of the 1996 Act would be on the sum arrived at under Section 31(7)(a) of the 1996 Act. Learned senior counsel asserts that it would be wrong to say that learned Arbitrator had no jurisdiction to issue the clarification. A plain reading of Section 33(2) of the 1996 Act would show that the learned Arbitrator had the jurisdiction to issue the clarification. He submits that even learned Single

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Judge while setting aside the clarification acknowledged the fact that the learned Arbitrator had the jurisdiction to issue the clarification but the same had to be issued within 30 days. Once the Division Bench had given liberty to the respondent to seek clarification after 30 days even that issue i.e. seeking of clarification beyond 30 days would be of no consequence.

- 33.6. Learned senior counsel submits that undue hardship and serious prejudice would be caused to the respondent if the concurrent findings of two courts which are based on order(s) of this Court are set aside. Contending that there is no merit in the civil appeal, respondent seeks dismissal of the same.
34. After the arguments were closed and judgment was reserved, we had permitted the parties to file brief summary of submissions actually canvassed before the Court. Pursuant to such permission, both the sides have filed brief summary of submissions.
35. Submissions made by learned counsel for the parties have received the due consideration of the Court. We have also considered the summary of submissions as well as the judgments cited at the bar.

Analysis

36. Let us at the outset refer to and analyse the relevant provisions of the 1996 Act. Section 31 of the 1996 Act deals with the form and contents of arbitral award. Section 31 has eight sub-Sections. Sub-Section (7) is relevant to the debate. Sub-Section (7) as it stood at the relevant point of time reads as under:

31. Form and contents of 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

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rate of eighteen per centum per annum from the date of award to the date of payment.

- 36.1. From a minute reading of sub-Section (7), it is seen that it has got two parts: the first part i.e. clause (a) deals with passing of award which would include interest up to the date on which the award is made. The second part i.e. clause (b) deals with grant of interest on the 'sum' awarded by the Arbitral Tribunal.
- 36.2. Let us now discuss in detail the contours of the two clauses. As per clause (a), when an award is made by the arbitral tribunal for payment of money, the 'sum' which is awarded may include interest at such rate as the arbitral tribunal deems appropriate, on the whole or any part of the money and for the whole or any part of the period. The period for which the interest may be granted would be between the date on which the cause of action arose and the date on which the award is made. The expression which needs to be noticed in this part is the following: *the arbitral tribunal **may** include in the sum for which the award is made interest at such rate as it deems reasonable.*
- 36.3. The word 'may' appearing in the above expression is quite significant. It implies that the arbitral tribunal has the discretion to grant interest at a reasonable rate. In other words, it may grant interest or it may not grant interest; but if it grants interest, it would be included in the 'sum' which is awarded by the arbitral tribunal.
- 36.4. This brings us to the second part i.e. clause (b) which deals with post award interest. The 'sum' directed to be paid by the arbitral tribunal shall, unless the award otherwise directs, carry interest at the rate of 18 percent per annum from the date of the award to the date of payment. Thus, what clause (b) provides for is that the arbitral tribunal may award interest on the 'sum' adjudged under clause (a). But if no such interest is awarded, then there shall be interest at the rate of 18 percent on the 'sum' awarded by the arbitral tribunal from the date of the award to the date of payment. The two crucial words in this part are *sum* and *shall*. As seen from clause (a), the 'sum' awarded by the arbitral tribunal would include interest

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if it is granted by the arbitral tribunal. Therefore, the 'sum' as awarded by the arbitral tribunal may or may not include interest. Whether the 'sum' so awarded includes or does not include interest, it would carry further interest at the rate of 18 percent from the date of the award to the date of payment unless another rate of interest is granted by the arbitral tribunal. While granting of interest under clauses (a) and (b) by the arbitral tribunal is discretionary, the interest contemplated under clause (b) in the event of failure of the arbitral tribunal to award interest is mandatory. Therefore, the legislature has consciously used the word *shall*.

37. Thus from an analysis of Section 31(7)(a) of the 1996 Act, which provides for pre-award interest, it is seen that the provision begins with the expression *unless otherwise agreed by the parties*, thereby highlighting the legislative stance that parties possess the autonomy to determine pre-award interest on the payment of money awarded by the arbitral tribunal. However, no such discretion is available to the parties under Section 31(7)(b) of the 1996 Act though such discretion is available to the arbitral tribunal.
38. Natural corollary to the above analysis would be that the 'sum' so awarded by the arbitral tribunal which may include interest from the date when the cause of action arose to the date of the award, would carry further interest of 18 percent from the date of the award to the date of payment unless the arbitral award otherwise directs. Thus, the legislative intent is that the awarded sum whether inclusive of interest or not, in case included, then from the date of cause of action to the date of award, would carry further interest from the date of the award to the date of payment.
39. Generally, going by the provisions contained in Section 31(7) of the 1996 Act, it is evident that an arbitral tribunal has the power to grant (i) pre-award (ii) *pendente lite* (iii) post-award interest. Intention behind awarding pre-award interest is primarily to compensate the claimant for the pecuniary loss suffered from the time the cause of action arose till passing of the arbitral award. Further, this is also to ensure that the arbitral proceeding is concluded within a reasonable period to minimise the impact of the pre-award interest as well as interest *pendente lite*; thereby promoting efficiency in the arbitration process. Similarly, grant of post-award interest also serves a salutary

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purpose. It primarily acts as a disincentive to the award debtor not to delay payment of the arbitral amount to the award holder.

40. In *S.L. Arora (supra)*, a two-Judge Bench of this Court considered amongst others the question as to whether Section 31 (7) of the 1996 Act authorises and enables arbitral tribunals to award interest on interest from the date of the award till payment. After referring to the old Arbitration Act, 1940 as well as to the provisions of the Interest Act, 1978, the Bench observed that unlike the old Act the 1996 Act contains specific provision dealing with power of the arbitral tribunal to award interest. Analysing the aforesaid provision, the Bench further observed that Section 31 (7) makes no reference to payment of compound interest or payment of interest upon interest; nor does it require the interest which accrues till the date of the award to be treated as part of the principal from the date of the award for calculating the post-award interest. Examining the difference between clauses (a) and (b) of Section 31 (7) of the 1996 Act, the Bench observed that clause (a) relates to pre-award period interest whereas clause (b) relates to post-award period interest. The contract binds and prevails in regard to interest during the pre-award period. The contract has no application in regard to interest during the post-award period. Clause (a) gives discretion to the arbitral tribunal in regard to the rate, the period, the quantum (principal) when awarding interest. But such discretion is always subject to the contract between the parties. Clause (b) also gives discretion to the arbitral tribunal to award interest for the post-award period but that discretion is not subject to any contract; moreover, if that discretion is not exercised by the arbitral tribunal, then the statute steps in and mandates payment of interest at the specified rate of 18% per annum for the post-award period. While clause (a) gives the parties an option to contract out of interest, no such option is available in regard to the post-award period.

- 40.1. Summing up, the Bench observed that in regard to pre-award period, interest has to be awarded as specified in the contract and in the absence of any contract, as per the discretion of the arbitral tribunal. On the other hand, in regard to the post-award period, interest is payable as per the discretion of the arbitral tribunal and in the absence of exercise of such discretion, at the mandatory statutory rate of 18% per annum. According to the Bench, the award of interest under sub-Section (7) of

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Section 31, like award of cost under sub-Section (8) of Section 31 of the 1996 Act, are ancillary matters when the arbitral tribunal decides the substantive dispute(s) between the parties. Therefore, the expressions *sum for which the award is made* and *a sum directed to be paid by an arbitral award* contextually refers to the award on the substantive claims and not ancillary or consequential directions relating to interest and costs. The Bench explained that clause (b) of Section 31(7) is intended to ensure prompt payment by the award debtor once the award is made. The higher rate of interest is provided in clause (b) with the deliberate intent of discouraging award debtors from adopting dilatory tactics and to persuade them to comply with the award. Holding that in the absence of any provision for interest upon interest in the contract, arbitral tribunals do not have the power to award interest upon interest or compound interest either for the pre-award period or for the post-award period, the Bench concluded as under:

34. Thus it is clear that Section 31(7) merely authorises the Arbitral Tribunal to award interest in accordance with the contract and in the absence of any prohibition in the contract and in the absence of specific provision relating to interest in the contract, to award simple interest at such rates as it deems fit from the date on which the cause of action arose till the date of payment. It also provides that if the award is silent about interest from the date of award till the date of payment, the person in whose favour the award is made will be entitled to interest at 18% per annum on the principal amount awarded, from the date of award till the date of payment. The calculation that was made in the execution petition as originally filed was correct and the modification by the respondent increasing the amount due under the award was contrary to the award.

41. The correctness of the view taken in *S.L. Arora* (supra) was gone into by a three-Judge Bench of this Court in *M/s. Hyder Consulting (UK) Ltd* (supra). The majority opined that it was not possible to agree with the conclusion in *S.L. Arora* (supra) that Section 31(7) of the 1996 Act does not require that interest which accrues till the

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date of the award be included in the *sum* from the date of the award for calculating the post-award interest. Justice Bobde in his majority opinion was of the view that the conclusion reached in *S.L. Arora* (supra) does not seem to be in consonance with the clear language of Section 31(7) of the 1996 Act. After extracting sub-Section (7) of Section 31 of the 1996 Act, the majority analysed clause (a) of sub-Section (7) in the following manner:

4. Clause (a) of sub-section (7) provides that where an award is made for the payment of money, the Arbitral Tribunal may include interest in the sum for which the award is made. In plain terms, this provision confers a power upon the Arbitral Tribunal while making an award for payment of money, to include interest in the sum for which the award is made on either the whole or any part of the money and for the whole or any part of the period for the entire pre-award period between the date on which the cause of action arose and the date on which the award is made. To put it differently, sub-section (7) (a) contemplates that an award, inclusive of interest for the pre-award period on the entire amount directed to be paid or part thereof, may be passed. The “*sum*” awarded may be the principal amount and such interest as the Arbitral Tribunal deems fit. If no interest is awarded, the “*sum*” comprises only the principal. The significant words occurring in clause (a) of sub-section (7) of Section 31 of the Act are “*the sum for which the award is made*”. On a plain reading, this expression refers to the *total amount* or *sum* for the payment for which the award is made. Parliament has not added a qualification like “principal” to the word “sum”, and therefore, the word “sum” here simply means “a particular amount of money”. In Section 31(7), this particular amount of money may include interest from the date of cause of action to the date of the award.

41.1. Insofar clause (b) is concerned, the majority opined as under:

7.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

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

- 41.2. Thus, clause (a) of sub-Section (7) of Section 31 provides that the arbitral tribunal may include interest while making an award for payment of money in the sum for which the award is made and as per clause (b), the sum so directed to be made by the award shall carry interest at a certain rate for the post-award period. The purpose for enacting such a provision is to encourage early payment of the awarded sum and to discourage delay. Therefore, the 'sum' directed to be paid by the arbitral award under clause (b) of sub-Section (7) of Section 31 of the 1996 Act is inclusive of interest *pendente lite*. In *M/s. Hyder Consulting (UK) Ltd* (supra), the majority referred to Section 34 of the Civil Procedure Code, 1908 and after making a comparison of the said provision with Section 31(7) of the 1996 Act observed that while enacting Section 34 of the Civil Procedure Code, Parliament conferred power on a court to award interest *on the principal sum adjudged* and not merely on the 'sum' as provided in the 1996 Act. Observing that the departure from the language of Section 34 of the Civil Procedure Code in Section 31(7) of the 1996 Act is significant and shows the intention of the Parliament, it has been held as follows:

12. It is settled law that where different language is used by Parliament, it is intended to have a different effect. In the Arbitration Act, the word "sum" has deliberately not been qualified by using the word "principal" before it. If it had been so used, there would have been no scope for the contention that the word "sum" may include "interest." In Section 31(7) of the Act, Parliament has deliberately used the word "sum" to refer to the aggregate of the amounts that may be directed to be paid by the Arbitral Tribunal and not merely the "principal" sum without interest.

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

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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.

14. In fact this is a case where the language of sub-section (7) clauses (a) and (b) is so plain and unambiguous that no question of construction of a statutory provision arises. The language itself provides that in the sum for which an award is made, interest may be included for the pre-award period and that for the post-award period interest up to the rate of eighteen per cent per annum may be awarded on such sum directed to be paid by the arbitral award.

- 41.3. The majority declared that *S.L. Arora* (supra) was 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 *pendente 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. It has been clarified that the ‘sum’ includes the principal as adjudged together with the interest granted.
42. A three-Judge Bench of this Court in *UHL Power Company Limited Vs. State of Himachal Pradesh*,⁹ declared that the judgment in *S.L. Arora* (supra) has since been overruled by a three-Judge Bench of this Court in *M/s. Hyder Consulting (UK) Ltd.* (supra). The majority view in *M/s. Hyder Consulting (UK) Ltd.* (supra) is that post-award interest can be granted by an arbitrator on the interest amount awarded.

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43. The question as to whether the *sum* awarded under clause (a) of sub-Section (7) of Section 31 of the 1996 Act will include interest *pendente lite* or not again came up for consideration before a two-Judge Bench of this Court in *Delhi Airport Metro Express Private Limited Vs. Delhi Metro Rail Corporation*.¹⁰ The Bench referred to the decision of this Court in *M/s. Hyder Consulting (UK) Ltd* (supra) and held as follows:

15. It could thus be seen that the majority view of this Court in *Hyder Consulting (UK)* is that the sum awarded may include the principal amount and such interest as the Arbitral Tribunal deems fit. It is further held that, if no interest is awarded, the “sum” comprises only the principal amount. The majority judgment held that clause (a) of sub-section (7) of Section 31 of the 1996 Act refers to the total amount or sum for the payment for which the award is made. As such, the amount awarded under clause (a) of sub-section (7) of Section 31 of the 1996 Act would include the principal amount plus the interest amount *pendente lite*. It was held that the interest to be calculated as per clause (b) of sub-section (7) of Section 31 of the 1996 Act would be on the total sum arrived as aforesaid under clause (a) of sub-section (7) of Section 31 of the 1996 Act. S.A. Bobde, J. in his judgment, has referred to various authorities of this Court as well as *Maxwell on the Interpretation of Statutes*. He emphasised that the Court must give effect to the plain, clear and unambiguous words of the legislature and it is not for the courts to add or subtract the words, even though the construction may lead to strange or surprising, unreasonable or unjust or oppressive results.

- 43.1. Since in that case interest was governed by Article 29.8 of the concession agreement between the parties, the Bench explained the power of the arbitral tribunal to award interest *qua* the agreement and held as follows:

17. It could thus be seen that the part which deals with the power of the Arbitral Tribunal to award

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interest, would operate if it is not otherwise agreed by the parties. If there is an agreement between the parties to the contrary, the Arbitral Tribunal would lose its discretion to award interest and will have to be guided by the agreement between the parties. The provision is clear that the Arbitral Tribunal is not bound to award interest. It has a discretion to award the interest or not to award. It further has a discretion to award interest at such rate as it deems reasonable. It further has a discretion to award interest on the whole or any part of the money. It is also not necessary for the Arbitral Tribunal to award interest for the entire period between the date on which the cause of action arose and the date on which the award is made. It can grant interest for the entire period or any part thereof or no interest at all.

44. Again in the case of *Morgan Securities & Credits (P) Ltd. Vs. Videocon Industries Ltd.*,¹¹ the issue before this Court was whether the expression *unless the award otherwise directs* appearing in Section 31(7)(b) of the 1996 Act only provides the arbitrator the discretion to determine the rate of interest or both the rate of interest and the 'sum' which must be paid. After an exhaustive examination, this Court summarized the findings as under:

28.1. The judgment of the two-Judge Bench in *S.L. Arora* was referred to a three-Judge Bench in *Hyder Consulting* 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.

28.2. Bobde, J.'s opinion in *Hyder Consulting* 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).

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28.3. The phrase “unless the award otherwise directs” in Section 31(7)(b) only qualifies the rate of interest.

28.4. 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 per cent.

28.5. 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.

28.6. The arbitrator must exercise the discretionary power to grant post-award interest reasonably and in good faith, taking into account all relevant circumstances.

28.7 * * * * *

45. Let us now turn to Section 33 of the 1996 Act which provides for correction and interpretation of award; additional award. Section 33 reads as under:

33. Correction and interpretation of award; additional award.—(1) Within thirty days from the receipt of the arbitral award, unless another period of time has been agreed upon by the parties—

(a) a party, with notice to the other party, may request the arbitral tribunal to correct any computation errors, any clerical or typographical errors or any other errors of a similar nature occurring in the award;

(b) if so agreed by the parties, a party, with notice to the other party, may request the arbitral tribunal to give an interpretation of a specific point or part of the award.

(2) If the arbitral tribunal considers the request made under sub-section (1) to be justified, it shall make the correction or give the interpretation within thirty days from the receipt of the request and the interpretation shall form part of the arbitral award.

(3) The arbitral tribunal may correct any error of the type referred to in clause (a) of sub-section (1), on its own initiative, within thirty days from the date of the arbitral award.

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(4) Unless otherwise agreed by the parties, a party with notice to the other party, may request, within thirty days from the receipt of the arbitral award, the arbitral tribunal to make an additional arbitral award as to claims presented in the arbitral proceedings but omitted from the arbitral award.

(5) If the arbitral tribunal considers the request made under sub-section (4) to be justified, it shall make the additional arbitral award within sixty days from the receipt of such request.

(6) The arbitral tribunal may extend, if necessary, the period of time within which it shall make a correction, give an interpretation or make an additional arbitral award under sub-section (2) or sub-section (5).

(7) Section 31 shall apply to a correction or interpretation of the arbitral award or to an additional arbitral award made under this section.

- 45.1. As per sub-Section (1), within 30 days from the date of receipt of the arbitral award, a party with notice to the other party, may request the arbitral tribunal to correct any computation errors, any clerical or typographical errors or any other errors of a similar nature occurring in the award. Further, if the parties agree, a party with notice to the other party, may request the arbitral tribunal to give an interpretation of a specific point or part of the award. The period of 30 days contemplated under sub-Section (1) may stand extended to another period of time if agreed upon by the parties. Therefore, ordinarily the time limit for correction of errors or for interpretation of a specific point or part of the award is 30 days from the date of receipt of the arbitral award. However, the limitation of 30 days can be waived for another period of time, if agreed upon by the parties. Question for consideration is what would be the contours of the expression *unless another period of time has been agreed upon by the parties*, as appearing in sub-Section (1) of Section 33.
- 45.2. Sub-Section (7) of Section 33 clarifies that correction or interpretation of arbitral award or passing of additional arbitral award would attract Section 31 of the 1996 Act as discussed

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supra. Therefore, the language of sub-Section (1) of Section 33 makes it abundantly clear that the period of 30 days as provided in Section 33(1) is not an inflexible period. If the parties agree, the said period can be extended.

- 45.3. There is no dispute to the proposition of law laid down in *Harshad Chimani Lal Modi* (*supra*), relied upon by the appellant, that where a court has no jurisdiction over the subject matter of the suit by reason of any limitation imposed by the statute, charter or commission, it cannot take up the cause or matter; an order passed by the court having no such jurisdiction is a nullity. Question is whether such a proposition would have any application to the facts and circumstances of the present case. As we have seen, there was no embargo on the Arbitral Tribunal to exercise jurisdiction over the subject matter. The only limitation was that the correction and/or interpretation of the award should be done within 30 days from the date of receipt of the arbitral award unless another period of time has been agreed upon by the parties. Therefore, the expression *unless another period of time has been agreed upon by the parties* assumes critical significance.
46. Reverting back to the facts of the present case, learned Arbitrator passed the award on 16.12.1997. After adjusting the claims and counter claims, learned Arbitrator granted principal amount of Rs. 1,70,70,720.80 (corrected to Rs. 1,70,40,720.80 as per the corrigendum dated 18.12.1997). On the question of interest, learned Arbitrator awarded simple interest @ 18% per annum on the award amount from 01.04.1990 i.e. the date of cause of action to the date of actual payment except on claim No. 23(b).
47. In the execution proceeding before the learned Single Judge, an order was passed on 26.08.2004. Learned Single Judge framed an issue for consideration as to whether post-award interest under Section 31(7) of the 1996 Act would be calculated on the principal amount adjudged or on the principal amount plus interest on the principal amount which has accrued from the date of cause of action to the date of passing of the award as under the 1996 Act, award is to be enforced as a decree of the court. According to the learned Single Judge, it was an important issue affecting a large volume of litigation.

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Therefore, to avoid proliferation of litigation and unnecessary appeals, learned Single Judge was of the view that the aforesaid question should be decided by a Division Bench.

48. From a perusal of the Division Bench order dated 03.01.2005, it is seen that respondent had contended that there was no clarity as to whether the interest awarded by the Arbitral Tribunal was under Section 31(7)(a) of the 1996 Act or not. Respondent then made a submission that he may be permitted to approach the Arbitral Tribunal for a clarification on this issue. In view of such submission, Division Bench granted permission to the respondent to approach the Arbitral Tribunal for clarification. While granting such permission, Division Bench did not answer the above question clarifying that it had not expressed any opinion about payment of interest either under Section 31(7)(a) or under Section 31(7)(b) of the 1996 Act.
49. In terms of the permission granted, respondent filed an application before the learned Arbitrator seeking clarification of the interest awarded by the learned Arbitrator *qua* Section 31(7) of the 1996 Act. In its response to the application of the respondent filed before the learned Arbitrator, appellant contended that the learned Arbitrator had awarded simple interest @ 18% per annum on the awarded amount from 01.04.1990 to the date of actual payment except on claim No. 23(b). Referring to the interest portion of the award, it stated that interest was required to be paid on Rs. 1,70,70,720.80 minus Rs. 5,61,208.00 [for claim No. 23(b)] equal to Rs. 1,65,09,512.80, which is the principal amount. Therefore, it was contended that interest was to be paid on the amount of Rs. 1,65,09,512.80 till the date of payment. According to the appellant, respondent was entitled to interest on Rs. 1,65,09,512.80 from 01.04.1990 to 22.04.2002 @ 18% per annum. This comes to Rs. 3,56,60,547.64. Appellant had paid Rs. 1,65,09,512.80 on 22.04.2002 and another amount of Rs. 2,11,29,475.20 was paid towards interest also on 22.04.2002. It was submitted that learned Arbitrator had awarded interest for the past period, *pendente lite* and also future interest. Thus, learned Arbitrator had exercised his jurisdiction under Section 31(7)(a) as well as under Section 31(7)(b) of the 1996 Act. Therefore, there was no need for clarification.
50. What is therefore discernible from the above is that appellant had participated in the clarificatory proceeding before the learned Arbitrator

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taking the stand that no clarification as sought for was required on merit.

51. Learned Arbitrator issued the clarification on 15.03.2005. It was clarified that the amount awarded alongwith interest for the pre-reference and *pendente lite* periods become the decretal amount. As per Section 31(7)(b), this amount would carry further interest @ 18% per annum. Thus, learned Arbitrator clarified that post-award interest shall be payable on the awarded sum i.e. the amount of claim awarded (principal amount) plus interest for the pre-reference period and *pendente lite* upto the date of the award at the rate mentioned thereunder.
52. Appellant did not challenge the clarification dated 15.03.2005 under Section 34 of the 1996 Act; instead appellant questioned the same in the execution proceeding before the learned Single Judge. Learned Single Judge in his order dated 19.02.2008 held that learned Arbitrator had become *functus officio* and thus had no authority to entertain the application for clarification. Learned Arbitrator, in his award, had granted simple interest @ 18% per annum on the awarded amount i.e. the principal amount from 01.04.1990 to the date of actual payment which takes care of the interest part. The decree holder (respondent herein) neither challenged the award nor sought clarification within 30 days. It is also not a case where the award debtor (appellant herein) had agreed for extension of time limit. Holding that learned Arbitrator had no authority to make any change in the award, learned Single Judge set aside the clarification.
53. When the respondent approached the Division Bench assailing the above decision of the learned Single Judge, the Division Bench held *vide* the order dated 23.02.2012 that in view of the judgment in *S.L. Arora* (supra), compound interest under the 1996 Act cannot be granted. Accordingly, challenge to the decision of the learned Single Judge was rejected.
54. When the matter came up before this Court in Civil Appeal No. 2841 of 2015 at the instance of the revenue, this Court observed that the decision in *S.L. Arora* (supra) has been overruled in *M/s. Hyder Consulting (UK) Ltd.* (supra) declaring that the interest component payable to the respondent shall be computed in accordance with the law laid down in *M/s. Hyder Consulting (UK) Ltd.* (supra). Both the orders of the learned Single Judge and the Division Bench were

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set aside, further clarifying that it would be open to the respondent to seek execution as per the law pronounced by this Court in *M/s. Hyder Consulting (UK) Ltd.* (supra).

55. Thereafter, the executing court i.e. learned Single Judge passed the order dated 19.04.2017. Learned Single Judge, firstly, held that it was no longer open to examine the question as to whether the respondent had any right to approach the learned Arbitrator to seek clarification or whether the learned Arbitrator had become *functus officio* since the Division Bench had expressly permitted the respondent to seek clarification from the learned Arbitrator which decision was not interfered with by this Court. Thereafter, the decision of the Single Bench setting aside the clarification of the learned Arbitrator which was affirmed by the Division Bench were set aside by this Court in the civil appeal of the respondent with liberty to the respondent to seek execution as per the law laid down in *M/s. Hyder Consulting (UK) Ltd.* Secondly, learned Single Judge clarified that the respondent would be entitled to post-award interest not only on the claims as awarded but also on the pre-award interest as well as on the interest *pendente lite*. The quantum of pre-award interest and the interest *pendente lite* would be calculated and included in the amount awarded i.e. the 'sum' and the post-award interest would run on the said 'sum' i.e. principal amount plus interest (pre-award interest plus interest *pendente lite*).
56. When the appellant assailed this order before the Division Bench, vide the impugned order dated 01.07.2019, the Division Bench held as follows:

17. We, thus, reject the contentions of the learned counsel for the appellant for the reason that in the order dated 12.03.2015, the Supreme Court has directed that the High Court would decide the issue of interest component payable to the respondent in accordance with law laid down in *M/s Hyder Consulting (UK) Ltd.* (supra) and not in accordance with law laid down in *S.L. Arora* (supra). The other reason for rejecting the contentions of the appellant is that the grounds, which are sought to be urged before us, are not available to the appellant at this stage in these proceedings, which are execution proceedings. The matter had attained finality upto the Apex Court and we cannot interfere on the merits of the case at this stage.

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18. However, in view of the submissions of the parties with respect to the quantity, with the consent of the parties, we set aside the operative part of the order dated 19.04.2017 pertaining only to the calculations and permit both the parties to make submissions restricted to the quantum of the amount payable to the respondent.

57. Thus, as can be seen, the impugned order is a consent order. Division Bench of the High Court after taking the consent of the parties had remitted the matter back to the High Court only as to the calculations permitting both the parties to make submissions before the learned Single Judge on the quantum payable to the respondent. If that be the position, it is not open to the appellant to assail the aforesaid order.
58. The issue raised by the appellant in the present proceeding i.e. learned Arbitrator had become *functus officio* and therefore had no jurisdiction to issue the clarification, was also raised in the miscellaneous application filed by the appellant before this Court seeking clarification of the order dated 12.03.2015. While dismissing the miscellaneous application, no leave was granted by this Court to agitate the aforesaid issue in any other proceeding. Therefore, viewed from this perspective also, it is not open to the appellant to raise the aforesaid issue again in the present proceeding.

Conclusion

59. In view of what we have discussed above, the interpretation given by us to Section 33(1) of the 1996 Act and on a cumulative assessment of the attendant facts and circumstances of the case, we are of the view that the clarification sought for and issued by the learned Arbitrator would be covered by the expression *unless another period of time has been agreed upon by the parties* appearing in Section 33 (1) of the 1996 Act. This is a case where court had permitted the respondent to seek clarification from the learned Arbitrator beyond the initial period of 30 days whereafter the appellant fully participated in the clarificatory proceeding. Therefore, the present case would be covered by the above expression. In the circumstances, contention of the appellant that the learned Arbitrator had become *functus officio* and therefore lacked jurisdiction to issue the clarification cannot be accepted and is thus rejected.

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60. That apart, it is not the case of the appellant that the interest portion is covered by the contract agreement between the parties. In the absence thereof, Section 31(7)(a) as well as Section 31(7)(b) of the 1996 Act would have their full effect. The sum awarded would mean the principal amount plus the interest awarded from the date of cause of action upto the date of the award. Thereafter, as per Section 31(7)(b) of the 1996 Act, the sum (principal plus interest) would carry interest @ 18% from the date of the award to the date of payment. This would be consistent with the law laid down by this Court in *M/s. Hyder Consulting (UK) Ltd* (supra).
61. We thus see no error or infirmity in the impugned order passed by the Division Bench of the High Court. Consequently, we are of the view that the appeal lacks merit and is, accordingly, dismissed. However, there shall be no order as to costs.

Result of the case: Appeal dismissed.

[†]Headnotes prepared by: Ankit Gyan