

R.P. Garg

v.

The Chief General Manager, Telecom Department & Ors.

(Civil Appeal No. 10472 of 2024)

10 September 2024

[Pamidighantam Sri Narasimha* and Sandeep Mehta, JJ.]

Issue for Consideration

Whether the appellant is entitled to post-award interest on the sum awarded by the Arbitrator.

Headnotes[†]

Arbitration and Conciliation Act, 1996 – s.31(7)(b) – Grant of post-award interest, not subject to the contract between the parties – Appellant claimed payment of post-award interest, denied on the ground that the contract between the parties did not permit it – Correctness:

Held: Not correct – By virtue of s.31(7)(b), a sum directed to be paid by an Arbitral Award shall carry interest – s.31(7)(b) deals with grant of interest for post award period i.e., from the date of the award till its realization – The statutory scheme relating to grant of interest provided in s.31(7) creates a distinction between post-award and pre-award interest – s.31(7)(a) regulates pre-award interest and provides that the grant of interest shall be subject to the agreement between the parties as is evident from the expression at the commencement of the sub-section “unless otherwise agreed by the parties” – Whereas, so far as the entitlement of the post-award interest is concerned, s.31(7)(b) provides that the sum directed to be paid by the Arbitral Tribunal shall carry interest – The rate of interest can be provided by the Arbitrator and in default the statutory prescription will apply – Thus, s.31(7)(b) is not subject to party autonomy and is in contrast with s.31(7)(a) as it does not give the parties the right to “contract out” interest for the post-award period – Further, the expression ‘unless the award otherwise directs’ in s.31(7)(b) relates to rate of interest and not entitlement of interest – The only distinction made by s.31(7)(b) is that the rate of interest granted under the Award is to be given precedence over the statutorily prescribed rate – Impugned judgment of the High Court set aside – Judgment of the First

* Author

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Appellate Court-District Court granting 18% interest from the date of the award to its realization, restored. [Paras 9, 11, 13]

Case Law Cited

Jaiprakash Associates Ltd. v. Tehri Hydro Development Corporation (India) Ltd. [\[2019\] 2 SCR 41](#) : (2019) 17 SCC 786 – held inapplicable.

Morgan Securities & Credits (P) Ltd. v. Videocon Industries Ltd. [\[2022\] 9 SCR 819](#) : (2023) 1 SCC 602 – relied on.

List of Acts

Arbitration and Conciliation Act, 1996.

List of Keywords

Post-award interest; Pre-award interest; Contract/agreement between the parties; Telecom Department; Arbitration Agreement; Party autonomy.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 10472 of 2024

From the Judgment and Order dated 14.05.2019 of the High Court of Punjab & Haryana at Chandigarh in CR No. 2561 of 2003 (O&M)

Appearances for Parties

Parikshit Mahipal, Vaibhav Kumar Garg, Ms. Savita Garg, Ms. Shivani Mahipal, Ms. Bushra Parveen, Advs. for the Appellant.

Pradeep Kumar Mathur, Chiranjeev Johri, M.K. Tiwari, Gurmeet Singh Makker, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Judgment

Pamidighantam Sri Narasimha, J.

1. Leave granted.
2. The short question before us is whether the appellant is entitled to post award interest on the sum awarded by the Arbitrator. The Arbitrator

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denied payment of such interest under a misplaced impression that the contract between the parties prohibited it. The executing Court¹ affirmed the finding of the Arbitrator and rejected the prayer. However, allowing the appeal, the District Court² held that the appellant will be entitled to post award interest. By the order impugned before us, the High Court³ allowed the revision and set aside the District Court order while holding that the contract between the parties did not permit grant of post award interest.

- 2.1 For the reasons to follow, while allowing the appeal we have held that as this is a case arising out of the Arbitration and Conciliation Act, 1996,⁴ by operation of Section 31(7)(b), the *sum* directed to be paid under the Arbitral Award shall carry interest. This is a first principle. A sum directed to be paid by an Arbitral Award must carry interest. In this view of the matter, we have restored the judgment of the District Court granting 18% interest from the date of the award to its realization. The short facts are as under:
3. A contract was executed on 17.10.1997 between the appellant contractor, and the Telecom Department of Haryana, Respondents 1 and 2 herein, for trenching and laying of underground cables. Terms of the contract required the appellant to furnish a security of Rs. 10 Lakhs. Disputes that arose with respect to non-payment of bills submitted by the appellant during execution of the contract were referred to Arbitrator appointed under Section 11 of the Act on 24.10.2000.
4. The Arbitrator passed the Award on 08.03.2001. In the said Award, though the claim of the appellant was allowed, his plea for interest was denied on the ground that there is a specific clause in the Arbitration Agreement prohibiting the same.
5. During execution of the Award, the appellant claimed payment of post award interest on the Award by raising a specific objection to that effect. However, the learned Civil Judge, Senior Division vide his order dated 10.10.2002 dismissed the objection and affirmed the original award.

1 Order in M.A No. 19 of 2001 dated 10.10.2002.

2 Order passed by the District Judge in Civil Appeal no.86 of 11.11.2002 dated 04.03.2003

3 Order dated 14.05.2019 passed by the High Court of Punjab and Haryana in Civil Revision No. 2561 of 2003

4 Hereinafter referred to as 'the Act'

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6. Aggrieved, the appellant filed an appeal. The District Judge allowed the appeal and by Order dated 04.03.2003 directed payment of post award interest at the rate of 18% on the Award amount. The appellant was also directed to approach the trial court for recovery of the same.
7. Being aggrieved, the Telecom Department, the respondent herein, filed a Civil Revision Petition before the High Court which was allowed by the High Court by the order impugned before us. The High Court looked into sub-clause (iv) of Clause 1 of the Contract entered between parties which provides for the scope of the grant of interest on certain payment. The sub clause is as under:-

“No interest will be payable on the earnest money or security deposit amount or any amount payable to the contractor under the contract.”

8. Assuming that the above referred clause of interest is an agreement between the parties prohibiting the grant of interest, the High Court proceeded to allow the Revision and set aside the grant of interest. The High court referred to the decision of this Court in Jaiprakash Associates Ltd. v. Tehri Hydro Development Corporation (India) Ltd.⁵ and came to the conclusion that the Supreme Court has laid down a precedent that interest cannot be paid when a contractual clause specifically prohibits it.
9. We are of the opinion that the judgment of High Court is clearly erroneous. Firstly, the interest granted by the First Appellate Court only related to post award period, and therefore, for this period, the agreement between the parties has no bearing. Section 31(7)(b) deals with grant of interest for post award period i.e., from the date of the award till its realization. The statutory scheme relating to grant of interest provided in Section 31(7) creates a distinction between interest payable before and after the award. So far as the interest before the passing of the award is concerned, it is regulated by Section 31(7)(a) of the Act which provides that the grant of interest shall be subject to the agreement between the parties. This is evident from the specific expression at the commencement of the sub-section which says “unless otherwise agreed by the parties”.

5 [2019] 2 SCR 41 : (2019) 17 SCC 786

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10. The relevant extract of Section 31 of the Act is reproduced herein for ready reference:

"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 rate of two per cent, higher than the current rate of interest prevalent on the date of award, from the date of award to the date of payment.”

11. So far as the entitlement of the post-award interest is concerned, sub-Section (b) of Section 31(7) provides that the sum directed to be paid by the Arbitral Tribunal *shall* carry interest. The rate of interest can be provided by the Arbitrator and in default the statutory prescription will apply. Clause (b) of Section 31(7) is therefore in contrast with clause (a) and is not subject to party autonomy. In other words, clause (b) does not give the parties the right to “contract out” interest for the post-award period. The expression ‘unless the award otherwise directs’ in Section 31(7)(b) relates to rate of interest and not entitlement of interest. The only distinction made by Section 31(7)(b) is that the rate of interest granted under the Award is to be given precedence over the statutorily prescribed rate. The assumption of the High Court that payment of the interest for the post award period is subject to the contract is a clear error.
12. The clear position of law that granting post-award interest is not subject to the contract between the parties was recently affirmed in the decision of this Court in Morgan Securities & Credits (P) Ltd. v. Videocon Industries Ltd.,⁶ wherein the court observed as follows:

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

25. Section 31(7)(a) confers a wide discretion upon the arbitrator in regard to the grant of pre-award interest. The arbitrator has the discretion to determine the rate of reasonable interest, the sum on which the interest is to be paid, that is whether on the whole or any part of the principal amount, and the period for which payment of interest is to be made — whether it should be for the whole or any part of the period between the date on which the cause of action arose and the date of the award. When a discretion has been conferred on the arbitrator in regard to the grant of pre-award interest, it would be against the grain of statutory interpretation to presuppose that the legislative intent was to reduce the discretionary power of the arbitrator for the grant of post-award interest under clause (b). Clause (b) only contemplates a situation where the arbitration award is silent on post-award interest, in which event the award-holder is entitled to a post-award interest of eighteen per cent."

13. The High Court, therefore, committed an error in relying on the decision of this Court in Jaiprakash (supra). The judgement in Jaiprakash deals with the issue of prohibition of *pendente-lite* interest and will have no application to the facts of the present case where the claim relates to post-award interest.

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14. In view of the above, the appeal is allowed. The judgment of the High Court in Civil Revision No. 2561 of 2003 (O&M) dated 14.05.2019 is set-aside, and the decision of the First Appellate Court in C.A No. 86 of 11.11.02 dated 04.03.2003 for granting interest @ 18% p.a. is restored.
15. Parties shall bear their own costs.

Result of the Case: Appeal allowed.

[†]*Headnotes prepared by:* Divya Pandey