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Arbitrator has discretion to award Post Award Interest

Morgan Securities and Credits Pvt. Ltd. v. Videocon Industries Ltd.

Case	Civil Appeal No. 5437 of 2022
Date	1 September 2022
Court	Supreme Court of India
Coram	Hon'ble Justice Dr. D.Y. Chandrachud Hon'ble Justice A.S. Bopanna

1. Factual Matrix & Procedural History:

- 1.1 In the year 2003, the Appellant and Respondent entered into an agreement *vide* which the Respondent availed of bill discounting related facilities from the Appellant.
- 1.2 Pursuant to execution of said agreement, the Appellant disbursed INR 5,00,32,656 (Indian National Rupees Five Crore Thirty-Two Thousand Six Hundred and Fifty-Six) to the Respondent. The dues however remained unpaid on the due date of disbursement which was 17 April 2003.
- 1.3 Thereafter, on 10 January 2006, the Appellant issued a notice to the Respondent requesting payment of INR 5,00,32,656 (Indian National Rupees Five Crore Thirty-Two Thousand Six Hundred and Fifty-Six) which was the principal amount that was due under the agreement (**principal amount**).
- 1.4 Since the Respondent did not make the payment of the principal amount, the Appellant on 31 January 2006, issued a notice invoking arbitration as the Respondent failed to pay the amount so demanded.
- 1.5 In the arbitration that ensued, an arbitral award was passed in the favour of the Appellant on 01 March 2013. Since there was some clerical error, the award was corrected and passed on 29 April 2013. The award granted the principal amount and interest at the rate of:
 - 21% per annum from the date of default to the date of the demand notice; and
 - 36% per annum with monthly rests from the date of the demand notice to the date of award (**pre-award interest**); and
 - 18% per annum on the principal amount from the date of award to the date of payment (**post-award interest**). The award noted that interest of 18% per annum was awarded by the arbitrator in accordance with the judgement of the Supreme Court in *State of Haryana v. SL Arora*¹.
- 1.6 The award was challenged under Section 34 of the Arbitration and Conciliation Act, 1996 (**the Act**) by the Appellant before the Delhi High Court. The ground raised by the appellant was related to the grant of post award interest on the principal amount instead of the principal amount and pre award interest.
- 1.7 The petition that was filed thereafter came to be dismissed. The dismissal was challenged before a division bench of the Delhi High Court but to no avail.
- 1.8 Thereafter, proceedings under Article 136 of the Constitution of India were initiated for challenging the judgment dated 26 February 2020 passed by the division bench of the Delhi High Court.

2. Issue(s):

- 2.1 Whether the arbitrator has the discretion to grant post-award interest on the principal amount and pre-award interest or just the principal amount under Section 31(7)(b) of the Act?
- 2.2 Whether the phrase “*unless the award otherwise directs*” in Section 31(7) (b) of the Act only provides the arbitrator with the discretion to determine the amount of rate of interest to be paid or both the rate of interest and the sum upon which it must be paid against?

3. Contentions on behalf of the Appellant:

- 3.1 Relying on Section 31(7)(b) of the Act and the judgement in *Hyder Consulting (UK) Limited v. Governor, State of Orissa*², the appellant argued that pre-award interest is to be granted

¹ (2010) 3 SCC 690.

² (2015) 2 SCC 189.

on the principal sum and post-award interest must be granted on the sum combining the principal sum and the pre-award interest.

- 3.2 Relying on the majority opinion of the Hon'ble Supreme Court in *Hyder Consulting*³ the appellant argued that once pre-award interest was granted on the principal sum then the same will lose its character of 'interest' and will be considered as the awarded 'sum' for granting the post-award interest under Section 31(7) (b) of the Act.
- 3.3 Further, the Appellant also argued relying upon the decision in *State of Haryana v SL Arora*⁴, that the discretion of the arbitrator was restricted to rate of post award interest.

4. Contentions on behalf of the Respondent:

- 4.1 Section 31(7) (b) of the Act is qualified by the phrase "unless the award otherwise directs". Since the award herein awarded the interest, the said provision will not apply.
- 4.2 The Respondent also argued that the arbitrator has the discretion under Section 31(7) (b) of the Act to
 - grant post-award interest,
 - decide the amount over which to grant post-award interest, and
 - fix the rate at which to quantify interest.
- 4.3 The judgment in *State of Haryana v SL Arora*⁵ was overruled in the judgement of *Hyder Consulting*⁶ whereby it was held that it is not mandatory to grant post-award interest on the aggregate of the principal sum and the pre-award interest.

5. Judgment:

- 5.1 The Court held that the arbitrator has the discretion to award post award interest under the Act. The Court noted that clause (b) of Section 37(1) of the Act, does not fetter the discretion of the arbitrator to grant post award interest.
- 5.2 The Court further held that it is only in circumstances where the arbitrator does not award post award interest that the mandate of Section 37(1)(b) of the Act will apply. The judgement in *Hyder Consulting*⁷, did not restrict discretion of the arbitrator to award post award interest on part of the sum (i.e., just the principal amount) merely because it held that interest may be awarded on the principal sum and pre award interest. The Court also held that phrase 'unless the award otherwise directs' in Section 31(7)(b) only qualifies the rate of interest.
- 5.3 Finally, the Court also noted that the arbitrator should act in good faith, consider only pertinent factors and not unrelated ones, and think logically and reasonably while being mindful of the surrounding factors.
- 5.4 Accordingly, the interest at the rate of 18% per annum as awarded by the arbitrator was upheld and the appeals filed against the order of the Delhi High Court was dismissed.

6. PSL Opinion:

- 6.1 The Supreme Court in this judgment has correctly furthered the pro-arbitration stance of the judiciary by upholding the discretion of the arbitrator under Section 31(7)(b) of the Act to award post award interest as appropriate. The Supreme Court correctly read the definition of 'sum' under Section 31(7)(b) of the Act and held that arbitrator was

³ *Ibid.*

⁴ *Supra 1.*

⁵ *Ibid.*

⁶ *Supra 2.*

⁷ *Ibid.*

competent to decide the sum upon which post award interest is to be calculated in a particular case.