

Arbitrators empowered to pass award post award interest on interest pendente lite

The Supreme Court, while overruling its earlier judgment passed in State of Haryana and Others v. S.L. Arora and Company, (2010) 3 SCC 690, held that Arbitral Tribunal is well empowered to grant interest even in the absence of clause in the contract for grant of interest while exercising its power under Section 31(7) of the Arbitration and Conciliation Act, 1996.

In *M/s. Hyder Consulting (UK) Ltd. Vs. State of Orissa* (Civil Appeal No. 3148 of 2012), the Supreme Court analysed the issue on whether post award interest can be levied only on the principal amount awarded or on the aggregate of principal amount and interest to be payable pendente lite.

In the instant case, an arbitral award was made in favour of the Appellant. During execution proceedings, the District Judge ordered payment of an amount taking into account interest payable on the principal amount and the interest *pendente lite* thereon for the calculation of post award interest. Subsequently, the order of the District Judge was quashed by the High Court on the basis of the judgment of the Supreme Court in the case of *State of Haryana Vs. SL Arora and Co.* (“**SL Arora Case**”) which stated that “interest on interest pendente lite” (post award interest) could not be awarded. Consequently, the Appellant appealed in the Supreme Court challenging the judgment of the High Court.

The Supreme Court analyzed the words in Section 31(7) of the Arbitration and Conciliation Act 1996 and held that the words “include in the sum” in the part of the section “...the arbitral tribunal may include in the sum for which the award is made interest...” is of utmost importance. The words “include in the sum” has been deemed to suggest that pre-award interest is to be inclusive of the “sum” awarded. Therefore, it was to mean that if an interest is awarded at the time of making the award, the interest component will not be awarded separately but it shall become part and parcel of the award and the sum and interest cannot be seen independent of each other.

The court, on perusal of Section 31(7) of the Arbitration and Conciliation Act 1996 that talks about post award interest, held that the language of the section states that an interest is to be levied on a ‘sum’ directed to be paid by an arbitral award. The court held that since the word ‘sum’ includes the interest pendente lite the interest in post award stage would be held on the aggregate of principal amount and interest to be payable from the date of cause of action to the date of award. The Supreme Court also stated that the word “sum” has deliberately not been qualified by using the word “principal” before it by the statute.

The court further held that, the term ‘*interest on interest*’ is erroneous since any post award interest is to be on the sum directed to be paid by the arbitral tribunal and the word sum is inclusive of the interest in the pre-award period.

Disclaimer: The information contained herein is of general nature and is not intended to address the circumstances of any particular individual or entity. Although we Endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.