

HIGH COURT OF MADHYA PRADESH AT JABALPUR

Arbitration Appeal No : 10 OF 2008

M/s. Machines India

- V/s -

Chief Engineer, Jabalpur Zone

Present : **Hon'ble Shri Justice Rajendra Menon.**
 Hon'ble Shri Justice S.K. Gangele.

Shri V.R. Rao, learned Senior Advocate, with Shri S. Rao,
Advocate, for the appellants.

Shri V. Bhide, learned counsel for the respondent.

ORDER
13-01-2015

This appeal has been filed by the appellants under Section 39 of the Arbitration Act, 1940, being aggrieved by the order dated 31.01.2008 passed by the IXth Additional District Judge, Jabalpur in M.J.C. No.47/2003 by which the interest awarded by the sole Arbitrator @ 15% per annum has been reduced to 9% per annum by the Appellate Authority namely the Additional District Judge, Jabalpur.

2. The only question warranting consideration in this appeal is with regard to justification of the learned District Judge in reducing the quantum of interest while considering the same in a proceeding held before him under Section 30 read with 33 of the Arbitration Act, 1940.

3. Shri V.R. Rao, learned Senior Advocate argued that once the Arbitrator exercising jurisdiction and in the facts and circumstances of the case had awarded interest @ 18% per annum then the learned District Judge while hearing the matter could not reduce the award of interest from 15% to 9% and only on the basis of economic condition and reforms. It is

argued that a reasonable order passed awarding interest by the Arbitrator has been interfered without any justification.

4. In support of his contention to say that interest @18% could be awarded, Shri V.R. Rao, learned Senior Counsel invited our attention to the following judgments:-

1. **Bhagwati Oxygen Ltd. Vs. Hindustan Copper Ltd. 2005 Arb.W.L.J. 473,**
2. **T.P. George Vs. State of Kerala and Another 2001(1) Arb. L.R. 490 (SC),**
3. **Sayed Ahmed & Co. Vs. State of U.P. & Ors. AIR 2009 SC (Supp) 2032.**
4. **Union of India Vs. Arctic (India) 2005(1) Arb. L.R. 314, State of Goa Vs. K. Hassainar 2007(5) AIR Bom 571 and a Judgment of Jammu & Kashmir High Court in the case of**
5. **Union of India Vs. Roshni Devi & Ors. 2005(1) Arb. LR 363 (J&K).**

5. It is argued by Shri V.R. Rao, learned Senior Advocate that on the basis of the aforesaid judgments, once a reasonable interest @15% p.a is awarded, there was no justification on the part of the District Judge in reducing the rate of interest. He also places reliance on another judgment of the Supreme Court in the case of **Ghulam Mohammad Dar Vs. State of J&K and Others AIR 2008 SC 989.**

6. On the contrary, Shri Bhide learned counsel for the respondent invited our attention to the judgment of the learned District Judge, the reason given for reducing the interest rate to 9% p.a. and the justification given for the same with reference to the principle laid down by the Supreme Court in the case of **Krishna Bhagya Jala Nigam Ltd. Vs. G. Harischandra Reddy & Anr. 2007 AIR SCW 527.** Shri Bhide argued that in the light of the reduced interest rate due to economic reforms the rate of interest @9% p.a. awarded by the impugned order is being in conformity with the principle laid down by the Supreme Court in the case of **Krishna Bhagya Jala Nigam Ltd.** (supra), no interference be made in the matter.

7. We have heard learned counsel for the parties and gone through the records. The only dispute warranting consideration by us is, as to whether the learned District Judge was right in reducing the rate of

interest from 15% p.a., as awarded by the Arbitrator, to 9% p.a., taking note of the economic reforms that is going on and by referring to the judgments rendered in the case of **Krishna Bhagya Jala Nigam Ltd.** (supra), the interest had been reduced from 15% p.a. to 9% p.a. by the learned court below.

8. In the case of **Krishna Bhagya Jala Nigam Ltd.** (supra) also, an award was passed by the Arbitrator and by exercising powers under Section 31 (7) of the Arbitration and Conciliation Act, 1996 interest @18% for pre-arbitration, *pendente lite* and post award period was granted by the Arbitrator. However, when the matter travelled to the Supreme Court, the Supreme Court take note of the totality of facts and circumstances, the economic reforms that was going on in the country and the fact that in the backdrop of these reforms the interest regime has changed and rate of interest has substantially reduced, the interest was awarded @9% per annum.

9. In para 11, the Supreme Court has dealt with the matter in the following manner :-

“11. We do not see any reason to interfere except on the rates of interest and on the quantum awarded for letting machines of the contractor remaining idle for the periods mentioned in the Award. Here also we may add that we do not wish to interfere with the Award except to say that after economic reforms in our country the interest regime has changed and the rates have substantially reduced and, therefore, we are of the view that the interest awarded by the Arbitrator at 18% for the pre-arbitration period, for the *pendente lite* period and future interest be reduced to 9%.”

As the only question involved in this appeal pertains to award of interest in arbitration matters it would be appropriate to trace the development of law in this regard. When the Arbitration Act of 1940 was in force the Supreme Court reviewed the principle with regard to award of interest in the case of **Executive Engineer (Irrigation) Balimala Vs. Abhaduta Jena AIR 1988 SC 1520** and laid down various principles to say that the provisions of the Interest Act 1839 will not apply to arbitration proceedings. However, it was held that the Interest Act of 1978, which

came into force with effect from 19.8.1981 will apply to arbitration proceedings and the arbitrator may award interest in this provisions. It was thereafter held that provisions of Section 34 CPC which provided for payment of *pendente lite* interest will not apply to arbitration before the arbitrators with regard to grant of interest by arbitrators. Various principles were laid down in the aforesaid judgment in the matter of award of interest by arbitrators when appointed in a pending suits or otherwise and also in the matter of awarding interest *pendente lite*. However, this judgment in the case of **Abhaduta Jena** (supra) was overruled prospectively with effect from 12.12.1991 by a Constitutional Bench in the case of **Secretary Irrigation Department, Government of Orissa Vs. G.C. Roy AIR 1992 SC 732**. It was held in this case that the Arbitrator has power to grant interest *pendente lite* and the principle laid down in the case of **Abhaduta Jena** (supra) with regard to award of interest for a period prior to start of proceedings i.e. for pre-reference period was not overruled in the case of **G.C. Roy** (supra) in fact the principle laid down by the Constitutional Bench in the case of **G.C. Roy** which is relevant for consideration in the present appeal as contained in para 43, 44 and 46 of aforesaid judgment and for the sake of convenience the said principle is reproduced hereinunder :

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

- (i) A person deprived of the use of money to which he is legitimately entitled has a right to be compensated for the deprivation, call it by any name. It may be called interest, compensation or damages. This basic consideration is as valid for the period the dispute is pending before the Arbitrator as it is for the period prior to the Arbitrator

entering upon the reference. This is the principle of Section 34, Civil Procedure Code and there is no reason or principle to hold otherwise in the case of Arbitrator.

(ii) An Arbitrator is an alternative form (sic forum) for resolution of disputes arising between the parties. If so, he must have the power to decide all the disputes or differences arising between the parties. If the Arbitrator has no power to award interest pendente lite, the party claiming it would have to approach the court for that purpose, even though he may have obtained satisfaction in respect of other claims from the Arbitrator. This would lead to multiplicity of proceedings.

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

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

(v) Interest pendente lite is not a matter of substantive law, like interest for the period anterior to reference (pre-reference period). For doing complete justice between the parties, such power has always been inferred.

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

Where the agreement between the parties does not prohibit grant of interest and where a party claims interest and that dispute (along with the claim for principal amount or independently) is referred to the Arbitrator, he shall have the power to award interest pendente lite. This is for the reason that in such a case it must be presumed that interest was an implied term of the agreement between the parties and therefore when the parties refer all their disputes — or refer the dispute as to interest as such — to the Arbitrator, he shall have the power to award interest. This does not mean that in every case the Arbitrator should necessarily award interest pendente lite. It is a matter within his discretion to be exercised in the light of all the facts and circumstances of the case, keeping the ends of justice in view.

46. In view of the above discussion we hold that in two appeals namely Civil Appeal No. 1403 of 1986 and Civil Appeal No. 2586 of 1985 the Arbitrator acted with jurisdiction in awarding pendente lite interest and the High Court rightly upheld the award. In the result both the appeals fail and are, accordingly, dismissed but there will be no order as to costs. Even though we have held that the decision in Jena case does not lay down good law, we would like to direct that our decision shall only be prospective in operation, which means that this decision shall not entitle any party nor shall it empower any court

to reopen proceedings which have already become final. In other words, the law declared herein shall apply only to pending proceedings.”

10. Subsequently, the provisions of the present Arbitration and Conciliation Act of 1996 came into force and Section 31(7) of the present act laid down specific provisions with regard to grant of interest by arbitral tribunal and in fact by incorporating the provisions of Section 31(7) a simplified system for award of interest was incorporated. By virtue of this provision the Arbitral Tribunal is not empowered to grant interest at the rate as it deems reasonable for certain period between the date on which cause of action arose and a date on which award is made further by sub-clause (b) of Section 31(7) it was contemplated that until and unless otherwise directed the award will carry interest @ 18% p.a. from the date of the award till payment.

11. In the case of **G.C. Roy** (supra) the Supreme Court has observed that when the person is deprived of his right to use the money to which he is legitimately entitled to he has right to compensation for deprivation of his right by whatever name it may be called, be it interest, compensation or damages. The provisions of Section 31(7)(b) and the concept of award of interest has been subject to decision in various cases and interest granted in most of the cases depending upon the contract, delay in the proceedings, the agreement between the parties and the rate of interest as may be payable by the banks and various economic and financial constraints. It is not in dispute after analysing the concept of law in this regard that payment of interest in matters relating to arbitration is now an approved system. In the case of **Pure Helium India (P) Ltd. Vs. Oil & Natural Gas Commission, (2003) 8 SCC 593** the Arbitrator awarded interest @ 18% p.a. however looking to the long lapse of time the Supreme Court reduced the rate of interest to 6% p.a. instead of 18% p.a. as granted by the arbitrator. Similarly in the case of **Mukund Ltd. Vs. Hindustan Petroleum Corporation Ltd. 2006 (4) SCALE 453** the Supreme Court confirmed the decision rendered by the High Court and upheld award of

interest and its reduction by the High Court from 11% to 7½ % on the ground that it would be the reasonable rate of interest.

12. Similarly in the case of **Mc. Dermott International Inc. V. Burn Standard Co. Ltd. (2006) 2 Arb. LR 498 (SC)** interest awarded on a higher rate was reduced by the Supreme Court to 7½ % keeping in view the long lapse of time.

13. If the catena of judgments available in this regard are scrutinized it would be seen that it can be safely construed that subject to provisions of contract and the agreement that may be entered into between the parties awarding interest at a particular rate is matter of discretion to be executed by the arbitral tribunal, it is limited to period from which cause of action arose and till award is made. Sub Section (a) of Section 31 (7)(1) gives discretion in the matter whereas sub clause provides that mandatory interest in default of interest is awarded as its condition pre-interest based on discretion and post award period.

14. As far as pre-reference period is concerned the law permits its execution by agreement between the parties and for remaining period the arbitrator is given power under Section 31(7)(a) and under Section 31(7)(b) to pass an appropriate order.

15. Finally in the case of **P. Radhakrisna Murthy Vs. National Buildings Construction Corporation Ltd. (2013) SCC 747** the Supreme Court after analyzing various aspects of the matter and after taking note of principle laid down in the case of **G.C. Roy** by a Constitutional Bench found that for awarding interest it is not always necessary to award interest @ 15% or 18% p.a. . it was held in the facts and circumstances of that case that the High Court can reduce interest and award of interest @ 12% p.a. based on the bank rate of interest as was existing in the year 1988 was approved by the Supreme Court reduction of the interest awarded at 16.5% to 12% by the High Court was approved by the Supreme Court in the aforesaid case.

16. In para 21 the following observations were made by the Hon'ble Supreme Court :

The High Court has examined the rate of interest at 16.5% on the amount awarded in favour of the contractor by the civil court and has considered the contention urged on behalf of NBCC that the rate of interest awarded is excessive and also the contention that there is no contract of payment of interest on the same and alternatively contended that the interest rate should not normally exceed 6% per annum. These contentions have been seriously contested by the appellant's counsel contending that the award of interest between 15% to 18% per annum on the basis of bank lending rates should be allowed as NBCC itself has claimed interest at the rate of 18.5% per annum on the amount claimed from the contractor. Keeping the aforesaid aspect in mind and in the absence of contract with regard to the rate of interest to be awarded in favour of the contractor and having regard to the facts and circumstances of the case, the High Court has come to the right conclusion and awarded interest at the rate of 12% on the amounts due to the contractor on the basis of the rate of interest paid by the banks to its customers on long-term deposits prevailing in 1988. The same cannot be found fault with by this Court for the reason that the High Court taking relevant aspects into consideration has rightly reduced the rate of interest to 12 % per annum from 16.5% per annum after holding that exercise of discretionary power by the arbitrator under Section 34 CPC is a discretionary power and the same cannot be interfered with by the High Court.

In the backdrop of these settled principle we may now examine the submission made in the present case.

17. In the cases relied upon by Shri V.R. Rao, learned Senior Counsel, in the case of **Bhagawati Oxygen Ltd.** (supra) interest had been awarded @ 18% per annum and if the reasons given for awarding interest @18% per annum is analyzed in the backdrop of reasons given in Para 36, it would be seen that in the dispute in question between the parties it was found that there was already an agreement between the Bhagwati Oxygen Ltd. and Hindustan Copper Ltd., the contesting parties and a loan was advanced by respondent H.C.L. to the claimant B.O.L. @18 %. It is because of this reason that interest @18% was awarded in the said case. That being so, we are of the considered view that the aforesaid principle cannot be applied in the present case.

18. In the case of **T.P. George** (supra), the only question considered was that when an award is passed by the Arbitrator in all cases where money decree is issued interest has to be granted and without referring to any principle of law or without specifying any rate at which

interest is to be granted the only principle laid down is that due to price escalation, revision of rates and interest while passing the award the Arbitrator has to award interest from the date of award. This judgment does not laid down any principle of law with regard to rate at which the interest is to be paid.

19. In the case of **Sayeed Ahmed & Co.** (supra) the Arbitrator awarded interest @18% per annum, however, at the appellate stage this was reduced to 6% p.a. and the Supreme Court interfered into the matter and directed for grant of interest @18% p.a. and held that reducing the interest to 6% p.a. was not proper. In that case, the Hon'ble Supreme Court has only observed that the Arbitrator has awarded interest @18%, 14% and 12% p.a. respectively in three categories to the claimant and the High Court without any reason has reduced it to 6% p.a. holding that the Arbitrator exercised its power under Section 31(7) (b) of the Arbitration and Conciliation Act, 199, interference has been made in this case also except for holding that reduction of interest from 18% to 6% is illegal to the principle based on economic condition and change of interest regime as indicated by the Supreme Court in the case of **Krishna Bhagya Jala Nigam Ltd.** (supra) is taken note of.

20. Similarly in the judgment rendered by the Bombay High Court and Jammu & Kashmir High Court also this proposition should laid down that award of interest @18% or 15% as the case may be. However, in none of these cases is there any reference to the economic reforms being undertaken and the reason for reducing the interest.

21. In the case of **Krishna Bhagya Jala Nigam Ltd.** (supra), the Supreme Court has held that interest @9% p.a. has to be awarded keeping in view the economic reforms that is going on in the country and change being brought about in the interest regime and reduction of interest rate overall in all transactions.

22. Keeping in view the principle of law laid down by the Supreme Court in various cases are referred to hereinabove particularly, in the case of **Krishna Jal Nigam (supra)**, exercising jurisdiction by the learned District Judge based on the aforesaid principle, seems to be correct

and we see no reason to interfere in the matter, particularly when there is nothing to show that the reduction of interest ordered in the case is arbitrary and illegal decision rendered without any reason being given. That apart, this is also the legal principle that has been applied by the Supreme Court now again in the case of **P. Radhakrisna Murthy** (supra).

23. Accordingly, in the facts and circumstances of the case, we are of considered view that the learned District Judge has not committed any error in reducing the interest from 15% p.a. to 9%p.a. and as the reason given by the learned District Judge in Para 28 of his award is based on sound principle of law, approved by the Supreme Court as indicated hereinabove, we see no reason to interfere with the matter.

The appeal is accordingly dismissed.

(RAJENDRA MENON)
JUDGE

(S.K. GANGELE)
JUDGE

ss/-