



GAHC010285622018

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**THE GAUHATI HIGH COURT**  
**(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

**Case No. : CRP(IO)/437/2018**

M/S. BUILDWORTH PVT. LTD.  
G.S. ROAD, DISPUR, GUWAHATI-781005, BEING REP. BY ITS DIRECTOR,  
DEEPAK SINGH,

VERSUS

BHARAT HEAVY ELECTRICAL LTD.  
HEAVY PLATES AND VESSELS PLANT VISAKHAPATAM, ANDHRA  
PRADESH-530012.

**Advocate for the Petitioner : MR D DAS**

**Advocate for the Respondent : MS. M BHATTACHARJEE**

Linked Case : CRP(IO)/440/2018

M/S. BUILDWORTH PVT. LTD.  
G.S. ROAD  
DISPUR  
GUWAHATI- 781005  
BEING REP.BY ITS DIRECTOR  
DEEPAK SINGH.

VERSUS



BHARAT HEAVY ELECTRICAL LTD.  
HEAVY PLATES AND VESSELS PLANT VISAKHAPATAM  
ANDHRA PRADESH  
PIN - 530012

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Advocate for : MR D DAS  
Advocate for : MS. M BHATTACHARJEE appearing for BHARAT HEAVY  
ELECTRICAL LTD.

Linked Case : CRP(IO)/439/2018

M/S. BUILDWORTH PVT. LTD.  
G S ROAD  
DISPUR  
GUWAHATI- 781005  
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VERSUS

BHARAT HEAVY ELECTRICAL LTD  
HEAVY PLATES AND VESSELS PLANT  
VISHAKHAPATNAM  
ANDRA PRADESH  
PIN- 530012

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Advocate for : MR D DAS  
Advocate for : MS. M BHATTACHARJEE appearing for BHARAT HEAVY  
ELECTRICAL LTD

Linked Case : CRP(IO)/438/2018

M/S. BUILDWORTH PVT. LTD.  
G S ROAD  
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VISHAKHAPATNAM  
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Advocate for : MR D DAS  
Advocate for : MS. M BHATTACHARJEE appearing for BHARAT HEAVY  
ELECTRICAL LTD

**BEFORE**  
**HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

**JUDGMENT & ORDER (ORAL)**

**Date : 25-11-2021**

Heard Mr. D Das, the learned senior counsel appearing on behalf of the petitioner assisted by Mr. R Sarma. I have also heard Mr. D Mazumdar, learned senior counsel for the respondent.

2. All the four petitions before me question the common order dated 07.06.2018 and 09.10.2018 passed by the Court of District Judge, Kokrajhar in Money Execution Case No. 26/2015, Money Execution Case No. 27/2015, Money Execution Case No. 28/2015 and Money Execution Case No. 29/2015. The question involved in all these four petitions is regarding the entitlement of the petitioner for future interest for the period from the date of the award till realization, inasmuch as vide the order dated 09.10.2018, the Court below, which is the Executing Court had come to a finding that the petitioner would only be entitled to interest on the principal amount from the date of filing the claim petitions till 07.03.2006 (the date of the award) at the rate of 12% and the petitioner is not entitled to the benefit under Section 31(7) (b) of the Arbitration and Conciliation Act, 1996 (for short, the Act of 1996). As all the four revision applications raised the same question of law and have also assailed the common

orders dated 07.06.2018 and 09.08.2018, I am proposing to dispose of all the four revision applications by way of the instant order.

3. The brief facts for the purpose of the instant case are that the disputes arose between the petitioner and the Bharat Heavy Electrical Ltd. (for short, BHEL) and as the said dispute was covered by an arbitration agreement; an Arbitrator was appointed for resolution of the said disputes which lead to an initiation of Arbitration Case No. 03/2004, Arbitration Case No.04/2004, Arbitration Case No.05/2004, Arbitration Case No.06/2004 and Arbitration Case No. 07/2004 respectively. By the common award dated 07.03.2006, in paragraph no. 30 which was the issue no. (iii) in the said proceedings, the learned Arbitrator decided the entitlement of the petitioner (the claimant therein). The said paragraph 30 is quoted hereinbelow:

“Issue No. (iii)

30. *I have given my anxious consideration in the matter and considering the facts and circumstances of the case, I am of the opinion that the claimant is also entitled for the costs and interest as indicated below:-*

Arbitration Case No. 3/2004 : *The claimant is entitled to receive the amount of Rs.25,28,172/- withheld by the respondents towards liquidated damages entitled to recover from BHPVL. The claimant is also entitled for interest on the aforesaid amount @12% from 22.07.1999 till the date of the award.*

Arbitration Case No. 4/2004: *The claimant is entitled to receive the amount of Rs.1,75,000/- withheld by the respondents towards liquidated damages entitled to recover from BHPVL. The claimant is also entitled for interest on the aforesaid amount @12% from 02.06.2000 till the date of the award.*

Arbitration Case No. 5/2004: *The claimant is entitled to receive the amount of Rs.93,158/- withheld by the respondents towards liquidated damages entitled to recover from BHPVL. The claimant is also entitled for interest on the aforesaid amount @12% from 02.06.2000 till the date of the award.*

Arbitration Case No. 6/2004: *The claimant is entitled to receive the amount of Rs.12,06,869/- withheld by the respondents towards liquidated damages entitled to recover from BHPVL. The claimant is also entitled for interest on the aforesaid amount @12% from 12.12.2000 till the date of*

*the award.*

*Arbitration Case No. 7/2004: The claimant is entitled to receive the amount of Rs.30,94,002/- withheld by the respondents towards liquidated damages entitled to recover from BHPVL. The claimant is also entitled for interest on the aforesaid amount @12% from 24.01.2001 till the date of the award.*

*The Issue No. (iii) is decided as above.”*

4. From the above quoted portion of the Award it would be clear that the learned Arbitrator had confined the award to the principal amount as well as interest @ 12% from the respective dates of filing the claim petitions in the said respective Arbitration proceedings till the date of the award. A perusal of the said award do not in any manner disclose that there was any specific directions or observations as regards the petitioner's entitlement for interest for the period from the date of the award till realization.
5. Pursuant to the said award, the petitioner filed execution applications before the Court of the District Judge at Kamrup(M), Guwahati. The said applications seeking execution of the award dated 07.03.2006 was registered and numbered as Money Execution (Arb) Case No. 06/2006, Money Execution (Arb) Case No. 07/2006, Money Execution (Arb) Case No. 08/2006, Money Execution (Arb) Case No.09/2006 and Money Execution (Arb) Case No.10/2006 respectively.
6. The execution applications being Money Execution (Arb) Case No. 07/2006, Money Execution (Arb) Case No. 08/2006, Money Execution (Arb) Case No. 09/2006 and Money Execution (Arb) Case No. 10/2006 were transferred to the Court of District Judge, Kokrajhar and subsequent to the said transfer, they were registered and numbered as Money Execution (Arb) Case No. 26/2015, Money Execution (Arb) Case No. 27/2015, Money Execution (Arb) Case No. 28/2015 and Money Execution (Arb) Case No. 29/2015 respectively.
7. Thereupon, before the District Judge, Kokrajhar i.e. the Executing Court various objections were raised as regards the entitlement of the said award for which there were various rounds of litigations before this Court also. The same, however, being not necessary is not referred herein.
8. However, vide an order dated 07.06.2018, the Court below after taking into

consideration the submission made by the petitioner came to a finding that the respondent who is the Judgment Debtor is liable to pay the interest due on the principal amount as awarded in the abovementioned Arbitration Cases and issued notice to the Judgment Debtor/BHEL to show-cause as to why their properties and inventories, equipments at the site of NTPC (BTPS) Salakati including bank accounts etc. should not be attached for recovery of the interest due on the principal amount as discussed.

9. At this stage for the purpose of appreciating the controversy before this Court it would be relevant to quote the relevant portion of the said order dated 07.06.2018 inasmuch as in view of the said observations made, it leads to filing of the review applications. The said relevant portion is quoted hereinbelow:

*“In view of discussion made above it is seen that on completion of merger, the present judgment debtor / BHEL has taken all the liabilities of the sick industry i.e. BHPVL and thus they are liable to pay the entire dues including the interest. As stated above the judgment debtor has already paid the principal amount of all the 4 (four) execution cases and hence the judgment debtor is only liable to pay the interest due on the principal amount as awarded in Arbitration Case Nos. 04/2004, 05/2004, 06/2004 & 07/2004. As per the arbitration award the decree holder is entitled to receive interest on the principal amount in four execution cases as follows:*

Arbitration Case No.	Money Execution Case No.	Amount of interest due
Case No. 04/2004	Case No. 26/2015	@12% on the principal amount of Rs.1,75,000.00 from 02.06.2000 till the date of award
Case No. 05/2004	Case No. 27/2015	@12% on the principal amount of Rs.93,158.00 from 02.06.2000 till the date of award
Case No. 06/2004	Case No. 28/2015	@12% on the principal amount of

		Rs.12,06,869.00 from 12.12.2000 till the date of award
Case No. 07/2004	Case No. 29/2015	@12% on the principal amount of Rs.30,94,002.00 from 24.01.2001 till the date of award

10. In view of the order dated 07.06.2018, the petitioner sought for a review of the said order on the ground that although they have claimed interest in their execution applications for the period from the date of the award till realization in terms with Section 31(7)(b) of the Act of 1996, but the Court below in its order dated 07.06.2018 only limited their entitlement to the principal amount along with the interest @ 12% from the respective dates of filing the claim petition to the date of the award. It was the contention before the Executing Court by the petitioner in their review applications that an error apparent on the face of the record had occurred in passing the order dated 07.06.2018 without taking into consideration the provisions of Section 31(7)(b) of the Act of 1996. At this stage, it may be relevant herein to mention that the review applications in the four execution proceedings which were registered and numbered as Misc Case No. 18/2018, Misc Case No. 19/2018, Misc No. 20/2018, Misc Case No. 21/2018, the Court below vide an order dated 09.10.2018, after hearing both the parties, rejected the said review applications on the ground that the arbitration award was very specific as regards the interest and the interest was awarded @ 12% per annum till the date of the arbitration award and consequently, the award and the interest covers only first sub clause of the provisions of Section 31(7) and the statutory interest @ 18% per annum can only be given if the award was silent as regards the statutory interest or there is no specific direction about the same. The Executing Court further observed that as the arbitration award was specific in respect of interest and it is also mentioned that the interest is also awarded till the date of the award, there was no error apparent on the face of the records.

11. Being aggrieved and dissatisfied with the said orders dated 07.06.2018 and 09.10.2018,

the petitioner is before this Court under Article 227 of the Constitution of India.

12. I have heard Mr. D Das, the learned senior counsel for the petitioner who submitted that the Arbitration and Conciliation Act, 1996 is a special statute dealing with arbitration. Section 31(7) of the said Act relates to the interest which the Arbitrator can award. He further submits that Section 31(7) has two facets; while Section 31(7)(a) relates to interest prior to the award, Section 31(7)(b) relates to interest post award till realization. He submits that the Court below erred in interpreting Section 31(7) in the proper perspective by applying both sub-clauses of Section 31(7) together, meaning thereby that the term "*unless the award otherwise directs*" in sub-clause (b) of Section 31(7) was read into sub-clause (a) of Section 31(7) without taking into consideration that Section 31(7) (a) was in reference to interest prior to the passing of the award or till the award. In this regard he places reliance on two judgments of the Supreme Court i.e. in the case of ***State of Haryana and others v. S.L. Arora and Company*** reported in **(2010) 3 SCC 690** and ***Hyder Consulting (UK) Limited vs. Governor, State of Orissa through Chief Engineer*** reported in **(2015)2 SCC 189**.

13. On the other hand, Mr. Dilip Mazumdar, learned senior counsel appearing on behalf of the respondent submits that a perusal of the award dated 07.03.2006 would go to show that the claimant/petitioner herein had raised the issue of realization of future interest but the award specifically dealt with the interest for the period from filing of the claim petition till the date of the award meaning thereby that the learned Arbitrator had rejected the claim for future interest. In that regard he further submits that the learned Arbitrator in spite of the claim made by the petitioner before the Arbitrator in arbitration proceedings for future interest, having not passed any award in respect to future interest, it would be deemed that the learned Arbitrator did not direct payment of interest within the meaning of "*unless the award otherwise directs*" of sub-clause (b) of Section 31(7). He further submits that upon perusal of the impugned order dated 07.06.2018, it would be clear that the petitioner never sought for relief as regards the future interest and he further submits that later on, having realized from the contents of the order dated 07.06.2018 that the Court below did not consider the aspect of future interest, the petitioner is now claiming for future interest by seeking clarification in the form of review. He also alternatively submits without prejudice to



his first contention, it would also be relevant to take into consideration the conduct of the parties, more particularly, the petitioner who is responsible for the delay in the execution proceedings and the said delay should be excluded while calculating the interest by the Executing Court while computing the further interest.

14. From the facts above narrated and the arguments of the counsels appearing on behalf of the parties, what can be called out is that the question seeking adjudication in the instant proceeding is as to whether the petitioner is entitled to future interest in terms with Section 31 (7) (b) of the Act of 1996 in the facts and circumstance of the case.

15. For the purpose of deciding the said question, it is relevant to quote the provisions of Section 31 (7) (b) of the Act of 1996 as it stood at the time when the arbitration award was passed and the said Section is quoted herein below:

*“(b) A sum directed to be paid by an arbitral award shall, unless the award otherwise directs, carry interest at the rate of eighteen per centum per annum from the date of award to the date of payment.”*

16. A reading of the Sections quoted hereinabove would show that Section 31 (7) (a) of the Act of 1996 deals with grant of pre-award interest while Clause (b) of Section 31 (7) of the Act of 1996 deals with grant of post-award interest. The legislative intend behind pre-award interest is to ensure that arbitration proceedings are conducted without unnecessary delay i.e. longer the proceeding, the longer would be the period attracting the interest. However, post-award interest is to ensure speedy payment in compliance with the award. Pre-award interest is on the discretion of the Arbitral Tribunal in so far as the rate, the period and the quantum subject to contract between the parties, while post-award interest on the awarded sum is the mandate of the law i.e. the only discretion available being the rate of interest to be awarded by the Arbitral Tribunal. In other words, the post-award interest is the mandate of law and unless, the Arbitral Tribunal otherwise directs, it shall carry interest @ 18% per annum from the date of the award to the date of the payment. In this regard the judgment of the Supreme Court rendered in the case of *State of Haryana v. S.L. Arora and Company reported in (2010) 3 SCC 690*, wherein the distinction between the two sub-clauses of Section

31 (7) of the Act of 1996 has been clearly observed to the effect that Clause (a) of Section 31 (7) permits the Arbitral Tribunal to address the interest at its discretion but subject to the contract between the parties, whereas the Clause (b) of the said sub-section (7) of Section 31 clearly indicates that an Arbitral Tribunal shall award interest from the date of the award to the date of the payment and if it is not done so, the said award shall carry interest at the rate of 18% per annum.

17. In paragraph 23 of the said judgment, the differences between the said sub-clauses of Section 31 (7) and the effect thereupon have been observed which is for the sake of convenience is quoted herein below:

*“23. The difference between clauses (a) and (b) of Section 31(7) of the Act may conveniently be noted at this stage. They are:*

*(i) Clause (a) relates to pre-award period and clause (b) relates to post-award period. 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.*

*(ii) Clause (a) gives discretion to the Arbitral Tribunal in regard to the rate, the period, the quantum (principal which is to be subjected to interest) when awarding interest. But such discretion is always subject to 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; and 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. (emphasis supplied)*

*(iii) 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.*

*In a nutshell, in regard to pre-award period, interest has to be awarded as specified in the contract and in the absence of contract, as per 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 a mandatory statutory rate of 18% per annum.”*

18. Again in paragraph 24, the Supreme Court laid down the legal position regarding the award of interest by the Arbitral Tribunal which is quoted herein below:

*“24. As there is some confusion as to what Section 31(7) authorises and what it does not authorise, we will attempt to set out the legal position regarding award of interest by the Arbitral Tribunals, as emerging from Section 31(7) of the Act.*

*24.1 The provision for interest in the Act is contained in Section 31 dealing with the form and contents of arbitral award. It employs two significant expressions “where the arbitral award is for payment of money” and “the Arbitral Tribunal may include in the sum for which the award is made, interest .... on the whole or any part of the money”. (emphasis supplied)*

*The legislature has thus made it clear that award of interest under sub-section (7) of Section 31 [and award of costs under sub-section (8) of Section 31 of the Act] are ancillary matters to be provided for by the award, when the Arbitral Tribunal decides the substantive disputes between the parties. The words “sum for which the award is made” and “a sum directed to be paid by an arbitral award” contextually refer to award on the substantive claims and not ancillary or consequential directions relating to interest and costs.*

*24.2 The authority of the Arbitral Tribunals to award interest under Section 31(7) (a) is subject to the contract between the parties and the contract will prevail over the provisions of Section 31(7)(a) of the Act. Where the contract between the parties contains a provision relating to, or regulating or prohibiting interest, the entitlement of a party to the contract to interest for the period between the date on which the cause of action arose and the date on which the award is made, will be governed by the provisions of the contract, and the Arbitral Tribunal will have to grant or refuse interest, strictly in accordance with the contract. The Arbitral Tribunals cannot ignore the contract between the parties, while dealing with or awarding pre-award interest. Where the contract does not prohibit award of interest, and where the arbitral award is for payment of money, the Arbitral Tribunal can award interest in accordance with Section 31(7)(a) of the Act, subject to any term regarding interest in the contract.*

*24.3 If the contract provides for compounding of interest, or provides for payment of interest upon interest, or provides for interest payable on the principal up to any specified stage (s) being treated as part of principal for the purpose of charging of interest during any subsequent period, the Arbitral Tribunal will have to give effect to it. But when the award is challenged under Section 34 of the Act, if the court finds that the interest awarded is in conflict with, or violating the public policy of India, it may set aside that part of the award.*

*24.4 Where an Arbitral Tribunal awards interest under Section 31(7)(a) of the Act, it is given discretion in three areas to do justice between the parties. First is in regard to rate of interest. The Tribunal can award interest at such rate as it deems reasonable. The second is with reference to the amount on which the interest is to be awarded. Interest may be awarded on the whole or any part of the amount awarded. The third is with reference to the period for which the interest is to be awarded. Interest may be awarded for the whole or any part of the period between the date on which cause of action arose and the date on which the award is made.*

*24.5 The Act does away with the distinction and differentiation among the four interest-bearing periods, that is, pre-reference period, pendent lite period, post-award period and post-decree period. Though a dividing line has been maintained between pre-award and post-award periods, the interest-bearing period can now be a single continuous period the outer limits being the date on which the cause of action arose and the date of payment, subject to however to the discretion of the Arbitral Tribunal to restrict the interest to such period as it deems fit.*

*24.6 Clause (b) of Section 31(7) is intended to ensure prompt payment by the award-debtor once the award is made. The said clause provides that the "sum directed to be paid by an arbitral award" shall carry interest at the rate of 18% per annum from the date of award to the date of payment if the award does not provide otherwise in regard to the interest from the date of the award. This makes it clear that if the award grants interest at the specified rate up to the date of payment, or specified the rate of interest payable from the date of award till the date of payment, or if the award specifically refused interest, clause (b) of Section 31 will not come into play. But if the award is silent in regard to the interest from the date of award, or does not specify the rate of interest from the date of award, then the party in whose favour an award for money has been made, will be entitled to interest at 18% per annum from the date of award. He may claim the said amount in execution even though there is no reference to any post-award interest in the award. Even if the pre-award interest is at much lower rate, if the award is silent in regard to post-award interest, the claimant will be entitled to post-award interest at the higher rate of 18% per annum. 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. (emphasis supplied)*



20. From the above quoted portions of the judgment of the Supreme Court, it would be clear that Clause (b) of Section 31 (7) though gives a discretion to the Arbitral Tribunal to award interest at a particular rate for the post-award period but that discretion is not subject to any contract and if that discretion is not exercised by the Arbitral Tribunal, then the statute steps in automatically and mandate payment of interest, at the specified rate of 18% per annum for the post award period.

21. The Supreme Court further in the judgment rendered in the case of *Hyder Consulting (UK) Limited*. (Surpa) through the majority opinion delivered by the Hon'ble Mr. Justice S.A. Bobde , at paragraphs no. 8 to 14 observed the effect of Section 31 (7) in so far as the imposition of interest on the award and the said paragraphs are quoted hereinbelow:

8. Thus, sub-section (7) of Section 31 of the Act provides, firstly, vide clause (a) 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 further, vide clause (b) that the sum so directed to be made by the award shall carry interest at a certain rate for the post-award period.

9. The purpose of enacting this provision is clear, namely, to encourage early payment of the awarded sum and to discourage the usual delay, which accompanies the execution of the award in the same manner as if it were a decree of the court vide Section 36 of the Act.

10. In this view of the matter, it is clear that the interest, the sum directed to be paid by the arbitral award under clause (b) of sub-section (7) of Section 31 of the Act is inclusive of interest *pendente lite*.

11. At this juncture, it may be useful to refer to Section 34 CPC, also enacted by Parliament and conferring the same power upon a court to award interest on an award i.e. post-award interest. While enacting Section 34 CPC Parliament conferred power on a court to order interest "on the principal sum adjudged" and not on merely the "sum" as provided in the Arbitration Act. The departure from the language of Section 34 CPC in Section 31(7) of the 1996 Act is significant and shows the intention of Parliament.

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 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."  
(emphasis supplied)

22. In the said case, the concurring opinion of Hon'ble Mr. Justice A M Sapre at paragraphs 26 and 27 being relevant is quoted herein below:

*"26. Section 31(7)(a) of the Act deals with grant of pre-award interest while clause (b) of Section 31(7) of the Act deals with grant of post-award interest. Pre-award interest is to ensure that arbitral proceedings are concluded without unnecessary delay. Longer the proceedings, the longer would be the period attracting interest. Similarly, post-award interest is to ensure speedy payment in compliance with the award. Pre-award interest is at discretion of the Arbitral Tribunal, while the post-award interest on the awarded sum is mandate of the statute – the only difference being that of rate of interest to be awarded by the Arbitral Tribunal. In other words, if the Arbitral Tribunal has awarded post-award interest payable from the date of award to the date of payment at a particular rate in its discretion then it will prevail else the party will be entitled to claim post-award interest on the awarded sum at the statutory rate specified in clause (b) of Section 31(7) of the Act i.e. 18%. Thus, there is a clear distinction in time period and the intended purpose of grant of interest.*



27. *Section 31(7) employs the words "... the Arbitral Tribunal may include in the sum for which the award is made interest ...". The words "include in the sum" are of utmost importance. This would mean that pre-award interest is not independent of the 'sum' awarded. If in case, the Arbitral Tribunal decides to award interest 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. An award is thus made in respect of a "sum" which includes within "sum" component of interest, if awarded."*

23. From the above two judgments, one thing is absolutely clear that the Arbitral Tribunal's power to grant interest for the period post award till realization is subject to the discretion only in respect to the rate as it is the mandate of the law to grant such interest for the post award period. The only difference is that the Arbitral Tribunal has a discretion to decide at a particular rate of interest and the said rate of interest shall prevail, else the party would be entitled to claim post award interest on the awarded sum at the statutory rate.

24. It is also clear that if the award is silent in reference to the interest from the date of the award, or does not specify the rate of interest from the date of award, that party in whose favor the award for money has been made, would be entitled to interest at 18% per annum from the date of the award and the said party can claim the said amount in execution even though there is no reference to any post-award interest in the award.

25. In the backdrop of the above settled principles, the contention raised by the counsel for the respondent to the effect that as the award is silent about the future interest after the award, the same being contrary to the provisions of law and the observations made hereinabove is rejected. The second contention which have been raised to that effect that from the order dated 07.06.2018, it reflects that the petitioner had not sought for future interest after passing of the order, is also misconceived in view of the fact that the petitioner had duly claimed the future interest in its execution application from the date of the award till realization. Even otherwise if the law permits interest on the said arbitration award, the Executing Court which is in charge to look into, amongst others, the satisfaction of the decree can very well award the said interest to which the petitioner is entitled as per law, as observed the Apex Court in paragraph 24.6 in the case of *State of Haryana(supra)*.



26. The third contention so raised that the petitioner has is not diligent and they were equally responsible for the delay in the execution proceeding for which the petitioner is not entitled to interest under Section 31(7) (b) at the rate of 18% is also totally misconceived inasmuch as the said contention goes against the legislative intent behind the enactment of Section 31(7)(b), as observed by the Supreme Court in the judgments quoted hereinabove. Further to that the said submission cannot be taken into consideration in as much as the respondent having not deposited the awarded sum with interest cannot raise such a contention.

27. In view of the above, both the orders dated 07.06.2018 as well as 09.10.2018 are interfered with and the parties are directed to also appear before the Court below on 18.12.2021 and the Executing Court is directed to proceed with the execution and the said awards in terms with the observations made hereinabove as well as the judgments of the Supreme Court quoted hereinabove.

28. With the above observation, these petitions stand allowed. No costs.

**JUDGE**

**Comparing Assistant**