

(2025) 11 DEL CK 1948

In the Delhi High Court

Case No : OMP (ENF.) (COMM.) No. 247 Of 2023

BWL Limited. (Formerly Known As Bhilai Wires Ltd.)

APPELLANT

Vs

Bharat Sanchar Nigam Limited

RESPONDENT

Date of Decision : 19-11-2025

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 31(7), 31(7)(a), 31(7)(b), 34, 37

Citation : (2025) 11 DEL CK 1948

Hon'ble Judges : Amit Bansal, J

Bench : Single Bench

Advocate : Monisha Handa, Arnav Chaudhary, Leena Tuteja, Ishita Kadyan

Final Decision : Disposed Of

Judgement

Amit Bansal, J.

1. The present petition has been filed seeking execution of the Award dated 26th September 2000 (hereinafter 'Award'), as modified by the Division Bench of the High Court of Calcutta (hereinafter 'Division Bench') and further modified by the Supreme Court.

2. The Award was passed in favour of the decree holder directing the judgment debtor to pay a sum of Rs. 6,07,56,342/- to the decree holder, which included interest at the rate of 18.5% per annum compounded on quarterly rests.

3. The Award was set aside by a Single Judge of the High Court of Calcutta (hereinafter 'Single Judge') vide order dated 15th October, 2004 in a petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter 'Act').

4. The decree holder filed an appeal against the aforesaid order under Section 37 of the Act, being APO No. 26/2005, which was partly allowed by the Division Bench. The Award was thus upheld though modified by the Division Bench.

5. Both the judgment debtor as well as the decree holder filed Special Leave

Petitions (SLPs) against the judgment of the Division Bench before the Supreme Court. The Supreme Court, vide a common order dated 12th April 2023, dismissed the appeal filed by the judgment debtor [Civil Appeal No. 7022/2011] and partially allowed the appeal filed by the decree holder [Civil Appeal No. 7024/2011].

6. Since the judgment debtor failed to pay the amount due to the decree holder in terms of the Award as modified by the Division Bench and further modified by the Supreme Court, the present execution proceeding has been filed.

7. Notice in the present petition was issued on 13th December 2023.

8. In the order passed on 20th January 2025, it has been recorded that the awarded amount has been paid to the decree holder and the only pending issue relates to the amount of interest.

9. The only question which thus remains to be adjudicated in the present petition is whether post-award interest is to be calculated on the principal amount as well as pendente lite interest thereupon or only on the principal amount.

10. While it is the contention of the decree holder that the interest amount has to be calculated on the principal amount as well as the pendente lite interest, it is the contention of the judgment debtor that interest has to be calculated only on the principal amount.

11. At the outset, it may be useful to refer to the observations made in the judgment passed by the Division Bench as well as the order of the Supreme Court.

12. The relevant observations from the judgment of the Division Bench on the aspect of interest are set out below:

"6. RESULT :-

The appeal thus succeeds in part. The order of the learned single Judge setting aside the award is set aside. The award dated September 26,2000 is upheld as modified to the extent that the principal sum awarded therein would carry interest for Rs. 67,62,366/- in full and final settlement of the interest claim.

7. DIRECTION :-

The respondents are directed to pay of the awarded amount so modified by the foregoing judgment and order within two months from date, if not paid earlier and in default the principal sum of Rs.48,23,819/- and Rs.8,11,486/- would carry further interest at the rate of 18 percent per annum to be calculated on the expiry of the two months' period referred to above..."

[emphasis supplied]

13. As may be noted from above, the Division Bench awarded a lump sum amount of Rs.67,62,366/- towards pendente lite interest. The Division Bench

further directed post-award interest at the rate of 18% per annum on the principal sum of Rs. 48,23,819/- and Rs. 8,11,486/- awarded under the Award, if the same was not paid within two months from the date of judgment passed by the Division Bench.

14. It would now be relevant to refer to the observations made by the Supreme Court while disposing of the appeal filed by the decree holder:

"6. Civil Appeal No. 7124/2011 has been preferred by the claimant, Bhilai Wires Ltd. This Court had issued limited notice on the question of interest. The award has denied preaward interest but granted pendente lite interest for the period during which arbitration proceedings continued (1994- 2000).

7. The Division Bench by the impugned order has curtailed the payment of interest to ₹ 67,62,366/- and the operation of Section 31 (7) of the 1996 Act by providing that post-award interest would be payable after the impugned judgment. In this Court's opinion, that direction was not justified. Admittedly, the award was in force for the period 26.09.2000 to 15.10.2004 when it was set aside by the Single Judge.

8. It would, therefore, be in the interests of justice that the appellant– Bhilai Wires Ltd. is held entitled to statutory interest under Section 31(7) at simple interest basis for that period. However, further period 16.10.2004 till the date of the impugned order i.e. 29.06.2010 there was no subsisting award; the impugned order is justified, to that extent.

9. At the same time, this Court is of the opinion that the no interference is called for with respect to the direction that interest under Section 31 (7) would be calculable from the date of impugned judgment i.e. 29.06.2010.

10. For the above reasons, the impugned judgment is hereby modified; in addition to the interest directed by it (calculated on simple interest basis), the appellant Bhilai Wires Ltd. shall also be entitled to statutory interest on simple interest basis for the period 26.09.2000 to 15.10.2004."

[emphasis supplied]

15. Relying upon the observations made in paragraph 10 of the order passed by the Supreme Court, it is submitted on behalf of the decree holder that the Supreme Court has directed payment of statutory interest to the decree holder. The use of the expression 'statutory interest' above indicates that the same pertains to post-award interest under Section 31(7)(b) of the Act.

16. Counsel for the decree holder relies on the judgment of the Supreme Court in Hyder Consulting (UK) Limited v. Governor, State of Orissa (2015) 2 SCC 189 in support of her submission that 'sum' which is directed to be paid by the judgment debtor under the Award, whether inclusive or exclusive of pre-award and/ or pendente lite interest, shall carry interest for the post-award period till the date of payment.

17. Per contra, the submission on behalf of the judgment debtor is that the Division Bench had specifically ordered in paragraph 7 of its judgment that the post-award interest would be payable only on the principal amount of Rs. 48,23,819/- and Rs. 8,11,486/-. The only modification made by the Supreme Court in the aforesaid direction is with regard to the additional period for which interest would be payable, i.e., from 26th September, 2000 to 15th October, 2004.

18. Accordingly, it is submitted that the decree holder is not entitled to post-award interest in terms of Section 31(7)(b) of the Act on the lump sum amount of Rs. 67,62,366/- towards pendente lite interest awarded by the Division Bench.

19. To appreciate the rival submission, it may be relevant to refer to Section 31(7) of the Act which provides for Award of interest in an arbitral award. The same is set out below for the sake of convenience:

“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.”

[emphasis supplied]

20. Under Section 31(7)(a) of the Act, a discretion has been given to the Arbitral Tribunal to award interest at a rate which it deems reasonable. The discretion further extends to whether interest is payable on whole or any part of the money to be paid under the Award as also in respect of the period for which the interest is payable. Section 31(7)(b) of the Act provides for mandatory payment of post-award interest, i.e., from the date of the Award till the date of the payment of the awarded amount, unless the Award otherwise provides.

21. It is clear from a reading of the judgment of the Division Bench that while modifying the Award, post-award interest was directed to be paid only on the principal amount of Rs. 48,23,819/- and Rs. 8,11,486/- and not on the lump sum amount awarded towards pendente lite interest, i.e., Rs. 67,62,366/-. Further, the aforesaid judgment directed that the post-award interest was payable from the date of judgment of the Division Bench, i.e., 29th June, 2010.

22. When the matter travelled to the Supreme Court, the Supreme Court was of the view that the Award was in force for the period from 26th September 2000,

i.e. date of the Award, to 15th October 2004, i.e. the date when it was set aside by the Single Judge. Therefore, it was held that the decree holder would also be entitled to statutory interest for the aforesaid period from 26th September, 2000 to 15th October, 2004.

23. In my opinion, the Supreme Court did not modify the direction passed by the Division Bench directing payment of interest only on the principal amount. The only modification effected by the Supreme Court was in respect of the period for which the post-award interest was payable. While the Division Bench directed payment of interest from 29th June 2010, the Supreme Court ordered post-award interest to be paid to the decree holder also for the period from 26th September 2000 to 15th October 2004.

24. On the basis of the discussion above, I cannot accept the submission made on behalf of the decree holder that in terms of the order passed by the Supreme Court, post-award interest would also be payable on the lump sum amount of pendente lite interest awarded by the Division Bench.

25. As noted above, under Section 31(7)(a) of the Act, it is the discretion of the Arbitral Tribunal to 'include in the sum for which the award is made interest, at such rate as it deems reasonable'. In the present case, while modifying the Award, since pendente lite interest was specifically not added to the principal sum on which post-award interest was directed to be paid by the Division Bench, it cannot be included in the 'sum directed to be paid by an arbitral award' as provided under Section 31(7)(b) of the Act.

26. This view is in conformity with the findings of the Supreme Court in *In Hyder Consulting (supra)*. The relevant observations made by the Supreme Court in *In Hyder Consulting (supra)* are set out below:

"4. Clause (a) of sub-section (7) provides that where an award is made for the payment of money, the Arbitral Tribunal may include interest in the sum for which the award is made. In plain terms, this provision confers a power upon the Arbitral Tribunal while making an award for payment of money, to include interest in the sum for which the award is made on either the whole or any part of the money and for the whole or any part of the period for the entire pre-award period between the date on which the cause of action arose and the date on which the award is made. To put it differently, sub-section (7)(a) contemplates that an award, inclusive of interest for the pre-award period on the entire amount directed to be paid or part thereof, may be passed. The "sum" awarded may be the principal amount and such interest as the Arbitral Tribunal deems fit. If no interest is awarded, the "sum" comprises only the principal. The significant words occurring in clause (a) of sub-section (7) of Section 31 of the Act are "the sum for which the award is made". On a plain reading, this expression refers to the total amount or sum for the payment for which the award is made. Parliament has not added a qualification like "principal" to the word "sum", and therefore, the word "sum" here simply means "a particular amount of money". In

Section 31(7), this particular amount of money may include interest from the date of cause of action to the date of the award.

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7. Thus, when used as a noun, as it seems to have been used in this provision, the word "sum" simply means "an amount of money"; whatever it may include — "principal" and "interest" or one of the two. Once the meaning of the word "sum" is clear, the same meaning must be ascribed to the word in clause (b) of sub-section (7) of Section 31 of the Act, where it provides that a sum directed to be paid by an arbitral award "shall ... carry interest ..." from the date of the award to the date of the payment i.e. post-award. In other words, what clause (b) of sub-section (7) of Section 31 of the Act directs is that the "sum", which is directed to be paid by the award, whether inclusive or exclusive of interest, shall carry interest at the rate of eighteen per cent per annum for the post-award period, unless otherwise ordered.

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."

[emphasis supplied]

27. In light of the discussion above, in my view, no further amount towards interest is payable on behalf of the judgment debtor to the decree holder.

28. Accordingly, the decree stands satisfied.

29. The petition stands disposed of.