

(2015) 03 SC CK 0189

In the Supreme Court Of India

Case No : Civil Appeal Nos. 3148, 3147, 3149 of 2012, 1390 of 2013, 2842 of 2015 (Arising out of SLP (C) No. 19895 of 2008), C.A. No. 2843 of 2015 (Arising out of SLP (C) No. 20282 of 2008), C.A. No. 2844 of 2015 (Arising out of SLP (C) No. 21896 of 2010) and C.A.

Hyder Consulting (UK) Ltd.

APPELLANT

Vs

Governor, State of Orissa

RESPONDENT

Date of Decision : 12-03-2015

Acts Referred:

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

Citation : (2015) 7 SCALE 128

Hon'ble Judges : Dipak Misra, J; Prafulla C. Pant, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Heard Mr. K.K. Venugopal and Mr. K.V. Vishwanathan, learned senior Counsel, along with Mr. Manu Nair, learned Counsel for the Appellants and Ms. Kirti R. Mishra, learned Counsel for the Respondent. The present appeals have been preferred assailing the judgment and order dated 28th July, 2010, passed by the High Court of Orissa at Cuttack in W.P.(C) No. 5302 of 2009, W.P.(C) No. 13228 of 2009 and W.P.(C) No. 15075 of 2009. The High Court in the concluding paragraph has directed thus:

"In view of the above, the impugned order dated 19.2.2009 and the order of attachment dated 26.3.2008 are quashed. The executing Court is directed to calculate the amount payable under the award as indicated above, keeping in view the principles laid down by the apex Court in S.L. Arora (supra) and determine as to whether any further amount is payable to the opposite party. In case any amount is found to have been paid in excess to the opposite party, the State-Petitioner is entitled to refund of the same."

2. It is apt to state here that the High Court has placed reliance on the decision rendered in State of Haryana and Others Vs. S.L. Arora and Company, AIR 2010

SC 1511 : (2010) 2 JT 534 : (2010) 3 SCC 690 : (2010) 3 SCR 297 . It is submitted by Mr. K.K. Venugopal, learned senior Counsel appearing for the Appellants that the judgment in S.L. Arora (supra), has been declared as not good law by the majority in Hyder Consulting (UK) Ltd. Vs. Governor, State of Orissa, (2015) 125 CLA 1 : (2015) 1 RCR(Civil) 165 : (2014) 10 SCJ 669 , which is the case in hand. In the said case, Bobde, J., in paragraph 21, has opined thus:

"In the result, I am of the view that S.L. Arora's case is wrongly decided in that it holds that a sum directed to be paid by an Arbitral Tribunal and the reference to the Award on the substantive claim does not refer to interest pendente lite awarded on the "sum directed to be paid upon Award" and that in the absence of any provision of interest upon interest in the contract, the Arbitral Tribunal does not have the power to award interest upon interest, or compound interest either for the pre-award period or for the post-award period. Parliament has the undoubted power to legislate on the subject and provide that the Arbitral Tribunal may award interest on the sum directed to be paid by the Award, meaning a sum inclusive of principal sum adjudged and the interest, and this has been done by Parliament in plain language."

3. Sapre, J., in his concurring opinion, in paragraphs 30, 31 and 32, has ruled thus:

"Therefore, I am inclined to hold that the amount award Under Section 31(7)(a) of the Act, whether with interest or without interest, constitutes a "sum" for which the award is made.

Coming now to the post-award interest, Section 31(7)(b) of the Act employs the words, "A sum directed to be paid by an arbitral award....". Clause (b) uses the words "arbitral award" and not the Arbitral Tribunal". The arbitral award, as held above, is made in respect of a "sum" which includes the interest. It is, therefore, obvious that what carries Under Section 31(7)(b) of the Act is the "sum directed to be paid by an arbitral award" and not any other amount much less by or under the name "interest". In such situation, it cannot be said that what is being granted Under Section 31(7)(b) of the Act is "interest on interest". Interest under Clause (b) is granted on the "sum" directed to be paid by an arbitral award wherein the "sum" is nothing more than what is arrived at under Clause (a).

Therefore, in my view, the expression "grant of interest on interest" while exercising the power Under Section 31(7) of the Act does not arise and, therefore, the Arbitral Tribunal is well empowered to grant interest even in the absence of clause in the contract for grant of interest."

4. Thus, Sapre, J., has concurred with Bobde, J. This being the position, it can be stated with certitude that decision in S.L. Arora (supra) does not lay down the law correctly. Hence, the computation of the amount has to be done by the executing court on the basis of principle stated in M/s. Hyder Consulting (UK) Ltd. (supra).

5. In view of the aforesaid, the judgment rendered by the High Court is modified to the extent indicated herein-above. The appeals are, accordingly, disposed of. There shall be no order as to costs.

Civil Appeal No. 2841 of 2015 arising out of S.L.P.(C) No. 18614 of 2012

6. Leave granted.

7. The present appeal is preferred against the judgment and order dated 23rd February, 2012, passed by the Division Bench of the High Court of Delhi, in E.F.A. (OS) No. 16 of 2008, wherein it has been held thus:

"Learned Counsel for the Appellant cannot dispute before us that the settled legal position which now prevails, is that, compound interest under the said Act cannot be granted in view of the judgment in State of Haryana and Others Vs. S.L. Arora and Company, AIR 2010 SC 1511 : (2010) 2 JT 534 : (2010) 3 SCC 690 : (2010) 3 SCR 297 . The result is that this amount is not payable.

We ate thus of the considered view that the appeal is an academic exercise, as the Appellant is not entitled to the compound interest on the short ground that such compound interest would not be payable in the short ground that such compound interest would not be payable in the absence of any provision for such interest in the contract in view of the judgment in S.L. Arora and Company (supra). We are thus not called upon to go into the reasoning of the learned Single Judge."

8. Recently, the decision in S.L. Arora (supra) has been overruled by majority view in Hyder Consulting (UK) Ltd. Vs. Governor, State of Orissa, (2015) 125 CLA 1 : (2015) 1 RCR(Civil) 165 : (2014) 10 SCJ 669 .

9. In view of the aforesaid, the interest component payable to the Appellant shall be computed in accordance with law laid down in M/s. Hyder Consulting (UK) Ltd. (supra) not in accordance with S.L. Arora (supra) as that has been declared not good law.

10. In the result, the conclusions by the learned Single Judge that has been affirmed by the Division Bench are set aside. It is open to the Appellant to seek execution as per the law pronounced by this Court.

11. The appeal is, accordingly, allowed. There shall be nor order as to costs.

Civil Appeal No. 1390 of 2013

12. Heard Mr. Nidhesh Gupta, learned senior Counsel for the Appellant.

13. In the present appeal, the question that arises for consideration is whether the High Court, while dealing with an appeal arising from rejecting an objection Under Section 34 of the Arbitration and Conciliation Act, 1996 could have modified the award especially the rate of interest determined by the learned Arbitrator.

14. As we find the learned Arbitrator, while dealing with the interest component, has directed as follows:

"Now, therefore, in order to settle the dispute between the parties regarding the basic loss suffered by the Petitioner/contractor, I allow Rs. 5 lacs with interest at the rate of 16% with quarterly rest from the date of cause of action i.e., the date of allotment till date of award and further at the rate of 18% with quarterly rest from the date of award till its final payment by the Respondents, instead of Rs. 1.00 lacs as suggested by the Desert Development Agencies committee, and also dismiss the claim of the Petitioner/contractor beyond Rs. 1.5 lacs."

15. The aforesaid direction is in consonance with the recent pronouncement in M/s. Hyder Consulting (UK) Ltd. (supra). The High Court has modified the said rate of interest by stating, inter alia, thus:

"After holding that the arbitrator has the power to award interest on both the contingencies the same has to be reasonable. The arbitrator, as indicated above, has awarded interest @ 16% with quarterly rest from the date of cause of action i.e., the date of allotment of work till the date of award and further at the rate of 18% with quarterly rest from the date of award till its final payment, which in my view, is excessive both pre-reference. I accordingly modify the award to the extent that the claimant-Respondent shall be entitled to simple interest @ 15% from the date of cause of action till the date of award and simple interest @ 18% from the date of award till its final payment. The said interest is awarded keeping in view the provisions of Section 31 of the Act of 1997."

16. At this juncture, we may repeat at the cost of repetition that the rate of interest granted by the Arbitrator is in consonance with M/s. Hyder Consulting (UK) Ltd. (supra) and hence, there was no justification on the part of the High Court hearing the appeal and it should not have modified the interest component applying equitable principle.

17. In the result, the direction issued by the High Court qua reduction of interest is set aside and the appeal is allowed. There shall be no order as to costs.

Civil Appeal No. 2842 of 2015 @ S.L.P.(C) 19895 of 2008 and Civil Appeal No. 2843 of 2015 @ S.L.P.(C) 20282 of 2008

18. Leave granted.

19. The present appeals are directed against judgment and order dated 21st May, 2008, passed by the High Court of Punjab & Haryana at Chandigarh in F.A.O. No. 4942 of 2007.

20. On a perusal of the impugned order, it appears that the High Court has only addressed itself to the grant of interest. The Arbitrator, as he find, had passed the award relating to interest component in the following manner:

"The Arbitrator further makes an award that the award amount of Rs. 47,39,041/- shall carry interest @ 18% per annum from the date of award till

the date of payment in accordance with Section 31.7(b) of the Arbitration & Conciliation Act, 1996."

The High Court has opined thus:

"It is contended that the sum of Rs. 47,39,041/- also includes the amount of interest and therefore, further interest could not have been awarded.

Learned Counsel for the Appellants, however, has not been able to show as to how the amount of interest awarded on the awarded amount is Rs. 47,39,041/- from the date of award till the date of payment is contrary to the provisions of Section 31.7(b) of the Arbitration & Conciliation Act, 1996."

21. The aforesaid direction given by the High Court is in tune with the recent majority view in M/s. Hyder Consulting (UK) Ltd. (supra) and, therefore, we do not find any flaw with the same. Resultantly, the appeals, being devoid of merit, stand dismissed. There shall be no order as to costs.

Civil Appeal No. 2844 of 2015 @ S.L.P.(C) No. 21896 of 2010

22. Leave granted.

23. The question that emanates for consideration in this appeal relates to grant of interest. The High Court has allowed the objection by the State of Punjab on the basis of the pronouncement in S.L. Arora (supra). The said judgment has been overruled by the majority view in M/s. Hyder Consulting (UK) Ltd. (supra).

24. In view of the aforesaid, we set aside the judgment and order passed by the High Court relating to grant of interest and direct the executing court, as the same is pending, to compute the interest as per the decision rendered in M/s. Hyder Consulting (UK) Ltd. (supra). The appeal is allowed and the judgment and order passed by the High Court is set aside. There shall be no order as to costs.