



ARBITRATION AND CONCILIATION

# Arbitrator cannot award Pre-Award Interest if the Terms of the Agreement Prohibits such Interest

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The Supreme Court in its recent judgment decided by J. Chelameswar and J. Abdul Nazeer in *Sri. Chittaranjan Maity v. Union of India*<sup>[1]</sup> held that arbitrator cannot grant interest for the period between the date of cause of action and date of award, when terms of agreement between the parties prohibits such interest. The Supreme Court further held in that question regarding the arbitrability of a dispute has to be raised before the arbitrator itself and it cannot be raised for the first time in the appeal.

In the present case, the appellant, who was a railway contractor, invoked arbitration clause, when a dispute arose with the railway. The arbitral tribunal passed an award determining the amount payable to the contractor along with interest for the pre-award period. When an appeal filed before the Single Judge of the Calcutta High Court was dismissed, the Railway approached the Division Bench. The Division Bench, relying on a 'no claims certificate' issued by the contractor, set aside the award on the ground that there was no arbitrable dispute.

There were two main issues to be decided by the Honorable Supreme Court namely: (i) Whether the Division Bench was justified in considering the arbitrability of the dispute for the first time in appeal; and (ii) Whether the arbitral tribunal was justified in awarding pre-award interest.

With regard to the first issue the Supreme Court was of the view that the Division Bench was not justified while considering the arbitrability of the dispute for the first time, particularly when the respondent railway had not urged the issue relating to 'no claims certificate' before the arbitral tribunal. The Supreme Court held that it was not open for the High Court to consider the plea of non-arbitrability for the first time in appeal.

With regard to second issue, the Supreme Court held that the appellant was not entitled to the interest amount awarded by the arbitral tribunal for the period between date of cause of action and date of award. The Supreme Court interpreted section 31 (7)(a) of the Arbitration and Conciliation Act 1996 dealing with payment of interest, which starts with the words “[U]nless otherwise agreed by the parties,”. Therefore, arbitrator cannot grant pre-award interest, if the agreement between the parties prohibits payment of such interest. In this case, the contract between the railway and contractor had a specific bar on payment of such interest. The Supreme Court, therefore, held that the appellant was not entitled to pre-award interest.

<sup>[1]</sup> Civil Appeal Nos. 15545- 15546 of 2017