



ARBITRATION AND CONCILIATION

In absence of an explicit clause on quantum of interest in a contract, compound interest cannot be awarded: Delhi High Court

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PUBLISHED 27 March 2023

In the case of M/s. Modi Construction Company vs. Ircon International Limited^[1], the Hon'ble High Court of Delhi ("the Court") while dealing with appeal filed under Section 34 of the Arbitration and Conciliation Act, 1996 ("the Act") discussed the extent of the interference of the judiciary in case of an appeal. Pursuant to this discussion, the Court held that as matter of practice it ought not interfere with interpretation of contract given by the arbitral tribunal when the same is reasonable.

The Court further went on to say that merely because an alternate view or a different reasoning is given by minority arbitrator, it does not render the award patently illegal.

FACTS OF THE CASE

Ircon International Limited (the Respondent) was given a contract by the Government of Andhra Pradesh to complete work relating to widening and strengthening of roads in Andhra Pradesh (the Project). Through two separate agreements, M/s. Modi Construction Company (the Petitioner) was appointed for the completion of work relating to widening and strengthening of road and asphaltting work of the Project. Thereafter, through a tripartite agreement, contracts awarded in favour of the Petitioner for completion of the Project was awarded to another agency.

During the subsistence of the contracts, a dispute arose between the parties. Prior to referring the dispute to arbitration, the parties resorted to conciliation but the conciliator terminated the proceedings. Thereafter, the parties in accordance with the [arbitration clause](#) in the contract, invoked arbitration and constituted a three members arbitral tribunal to adjudicate upon the dispute between the parties.

Of the three-member arbitral tribunal, majority arbitrators passed an award granting simple interest whereas one arbitrator, dissenting from the majority arbitrators, awarded compound interest to the Petitioner.

In light of the above facts, the Petitioner filed this petition before the Court under Section 34 of the Act challenging the award passed by the majority arbitrator awarding simple interest as against desired compound interest.

OBSERVATION OF THE TRIBUNAL

The clause around which the dispute revolves is stated hereunder- "***the Employer shall pay to the Contractor interest compounded monthly at the rate(s) stated in the Appendix to bid***".

The dissenting arbitrator interpreted the relevant clause of the contract to mean that payment would be interest compounded monthly, though in the sub-clause the rate of interest was to be as per Annexure to Bid in which the rate of interest was left as blank. In view of the aforesaid clause, the dissenting arbitrator passed an award with a monthly interest rate of 9% compounded.

The majority arbitrators ruled out that, as the interest rate was left blank, the clause could not be adhered to owing to its uncertainty. Thus, the entire clause became defunct ipso fact as per Section 29 of the Indian Contract Act, 1872. The majority arbitrators were not agreeable to the reasoning given by the dissenting arbitrator and hence awarded simple interest @ 9% per month.

CONTENTIONS

According to the learned counsel of the Petitioner, the said contracts stipulated both types of interest components: compound interest and interest rate. As the Respondent in the statement of defence raised an objection to the award of rate of interest without specifying whether it objected to the awarding of compound or simple interest, the award of simple interest is being challenged on the ground of it being perverse. Application of compound interest should not have been rejected merely because the rate of interest was not mentioned in the contract.

The majority arbitrators erroneously declared the entire clause void because the rate of interest was not stated without taking into account the severability of the clause.

OBSERVATIONS OF THE COURT

The Court acknowledges that the only issue raised is whether the award should have granted simple or compound interest.

The aforesaid issue was dealt with by examining the scope of interference of the courts under section 34 of the Act. The Court placed reliance on several judgments of the Hon'ble Supreme Court wherein the principle of patent illegality has been discussed. Subsequently, the Court concludes that the award passed by the dissenting arbitrator does not fall within the ambit of the patent illegality as the perversity of the award does not go to the root of the matter.

Furthermore, the Court held that merely because the respondent has not sought relief for declaration of the ambiguous clause imposing interest as void, shall not preclude the court from doing so.

The Court also upheld the undisputed nature of the arbitrator's authority to award interest while adjudicating upon financial claims. The Court upheld the speaking award granted by the arbitral tribunal as it interpreted the terms of the contract in its truest essence. While rejecting the claim of the Petitioner for awarding compound interest, the Court had several plausible explanations as to its belief that the clause providing interest is ineffective, void, and defunct due to its incompleteness and ambiguity.

The Court *inter alia* cited the cases of ***Dyna Technologies (P) Ltd vs Crompton Greaves Ltd***^[2] and ***Indian Oil Corporation Ltd. v. Shree Ganesh Petroleum, Rajgurunagar***^[3], in which the Apex Court had held and reaffirmed that the court should have limited intervention in the interpretation given by an Arbitral Tribunal of a contractual provision, unless such interpretation is patently unreasonable and perverse. When a contractual clause is ambiguous or open to multiple interpretations, the court cannot overturn the arbitral decision simply because it believes that another reading would have been preferable.

Hence, the Court determined that it only has a narrow scope of interference under Section 34 of the A&C Act and that, in accordance with the aforementioned principles established by the Apex Court, it cannot substitute its own reasoning with that of the Arbitrators, even when it is reasonable, or hear an appeal regarding an award made by an arbitral tribunal. As a result, the Petitioner's claims were not found to be reasonable, and hence the Petition was dismissed.

^[1] 2023/DHC/001790

^[2] (2019) 20 SCC 1

^[3] (2022) 4 SCC 463