



ARBITRATION AND CONCILIATION

Supreme Court Echoes Curtailing Power Of The High Court While Entertaining Appeal U/S. 34

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In a recent appeal in the matter of *M/s. Larsen Air Conditioning and Refrigeration Company versus Union of India & Ors.*^[1], the division bench of the Hon'ble Supreme Court of India ("the SC") while capturing the essence of Section 34 of the Arbitration and Conciliation Act, 1996 ("the Act") reaffirmed the circumscription of power of the High Court in setting aside of the award which in turn upheld the intent of the legislature while amending the Act.

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Brief facts

The parties invoked arbitration to resolve their disputes which arose out of an agreement. In wake of this, an arbitral tribunal was duly constituted and an award was passed. The said award crystallised the interest component and directed the first four respondents to pay interest at the rate of 18% p.a. *pendente lite* and further compound interest on the award in respect of adjudicated claims.

Aggrieved by the award passed by the tribunal, originally, the Respondent-state challenged the award before the District Court, Kanpur under [S. 34 of the Act](#). As the District Court, could not sit to adjudicate upon the said subject matter and also that the Respondent-state had failed to file any proof of the grounds alleged, rendered the challenge futile. This resulted in refusal to entertain the challenge and dismissal of the same.

By way of a condition precedent as envisaged under the provisions of the Act, the Respondent-state, pre-deposited a sum of Rs. 10,00,000 (Rupees Ten lakhs) as against a sum due to the tune of Rs. 1,82,878.11 (Rupees One lakh eighty-two thousand eight hundred and seventy eight), preferred an appeal before the Hon'ble High Court of Allahabad ("the High Court").

Proceeding before the High Court

The judgment passed by the High Court can be broadly summarised and expounded by projecting it into 2 components. Firstly, the High Court by partly allowing the appeal, critically examined and expressed its discontent on the reasoning given by the arbitrator on the aspect of compensation for loss awarded on account of non-issuance of tender document and immobilisation of business. Secondly, the High Court held that the interest rate of 18% p.a. awarded during *pendente lite* cannot be awarded and therefore reduced the rate of interest to 9% p.a. With regards to the residuary part of the award, the Hon'ble High Court deemed it prudent to not interfere.

Summary of contentions raised before the SC

The Appellant, by confining the scope of appeal before the SC, solely urges on the point of modification/reduction in the interest component, as ordered by the High Court.

The counsel for the Appellant submitted that the Ld. Arbitrator had at the time of passing an award, already reduced the interest rate to 18% p.a. as against the original claim of 24% p.a. In advancement of the said contention, the counsel highlighted that as per the erstwhile regime for awarding interest that prevailed prior to the amendment under S.31(7)(b) of the Act, the High Court erred in reducing the statutory interest rate of 18% and that the said interest rate is justifiable as stated in the judgment passed in *Shahi vs. State of U.P. & Ors.*^[2]

Moreover, the counsel also cited a relevant clause of the General Conditions of Contract which prescribed that the award of the arbitrator shall be final and binding on both the parties.

Conversely, the counsel for the Respondent-state while justifying the reduction of interest component and disallowance of awarding damages/compensation, submitted that the High Court had taken an all-encompassing view by considering the relevant provisions of the Act and the Indian Contract Act, 1872. In furtherance of his arguments, the Respondent-state relied upon the judgments passed in *Oriental Structural Engineers Pvt. Ltd. v. State of Kerala*^[3] and *Post Graduate Institute of Medical*

Moot Point

Whether the High Court has erred in modifying the arbitral award by reducing the interest from compound interest 18% to 9% simple interest per annum?

SC's Ruling

The SC, while considering the timeline of arbitration proceedings, held that as the arbitration proceedings commenced after the Act came into effect, the tribunal and the award passed, shall indisputably, be subjected to the provisions of the 1996 Act. Therefore, in view of the amended S.31(7) of the Act, the High Court may have averted to interfere with the arbitrator's finding on the interest awarded.

The SC, while distinguishing the unamended Act, emphasised on restriction and lack of power to modify the award and on its ability to solely set aside the award partially or wholly. The SC while examining the parliamentary intent to omit the power to modify, held that the extremely circumscribed jurisdiction of the SC allows the court to interfere with an award only on the ground of patent illegality.

The SC, while setting aside the modification given by the High Court, reinstated rate of interest awarded by the arbitrator for past, *pendente lite* and future. Taking into account the aforesaid factual backdrop, the SC marshalled the Respondent-state to pay the dues within the stipulated timeline and accordingly, disposed of the appeal.

^[1] Civil Appeal No(s). 3798 of 2023

^[2] [2019] 11 SCR 640

^[3] [2021] 4 SCR 137

^[4] (2019) 8 SCC 726