



REPORTABLE

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO. 11324 OF 2025

Arising out SLP (C) No. 18331 of 2019

OIL AND NATURAL GAS CORPORATION

LTD.

...APPELLANT(S)

VERSUS

M/S G & T BECKFIELD DRILLING SERVICES PVT. LTD.

...RESPONDENT (S)

JUDGMENT

MANOJ MISRA, J.

1. Leave granted. This appeal arises from a judgment and order of the Gauhati High Court¹ dated 08.03.2019, whereby the appeal (i.e., Arb. A 3/2007) of the respondent, under Section 37 of the Arbitration and Conciliation Act, 1996², was allowed, the judgment and order of the District Judge, Sivasagar, dated 15.11.2007, in Misc. Arb Case No.26 of 2005, under Section 34 of 1996 Act, was set aside and the arbitral award dated 21.11.2004 was affirmed.

Signature Not Verified
Digitally signed by
babita pandey
Date: 2024.09.02
16:36:27 IST
Reason:

¹ The High Court

² 1996 Act

FACTS

2. Facts relevant for deciding this appeal are that the appellant suffered an arbitral award, dated 21.11.2004, passed by a three member arbitral tribunal, which directed as follows:

“1. Preliminary objection as to maintainability of the present arbitration proceeding raised on behalf of the respondent ONGC, is rejected.

2(i) Claim No.2 relating to the 2nd invoice for dollar 20,729.17 being the outstanding balance is allowed rejecting the claim for interest thereon.

2(ii) Claim No.3 in respect of invoice No.3 for dollar 1,26,536.44 being unpaid balance is allowed without interest.

2(iii) Claim No.4 in respect of invoice No.4 for dollar 30,1401.05 being outstanding balance is allowed. Claim for interest is, however, rejected.

2(iv) Claim No.5 in respect of invoice No.5 for dollar 14,321.68 being the outstanding balance is allowed without interest.

2(v) Claim No.6 in respect of invoice No.6 of dollar 1,67,960.43 being outstanding balance is allowed but no interest is allowed.

2(vi) Claim No.7 in relation to invoice No.7 for dollar 87,523.37 being the unpaid balance is allowed and the claim for interest on the said amount is disallowed.

2(vii) Claim No.8 refers to invoice No.8 for dollar 60,000 is allowed without interest.

2(viii) Claim No.9 in respect of invoice No.9 for dollar 78,750 being 75% of the tools lost in hole is allowed without any interest.

2(ix) Claim No.10 vide invoice No.10 for dollar 15,000 in respect of charges for demobilization is allowed without any interest.

2(x) Claim for performance-bond amount of dollar 55,050 is allowed as the said sum was deducted improperly without any justification.

3. Accordingly, an award for the total amount of dollar 6,56,272.34 is passed in favour of the Claimant G & T BecField Drilling Services (P) Ltd against the Respondent, Oil & Natural Gas Corporation Ltd..

4. The said sum will carry interest at the rate of 12% per annum on and from 12/12/1998, the date when the statement of claim was affirmed, till recovery of the said amount and an Award for interest on the said amount is made accordingly.

5. The claimant will be entitled to Costs of the Proceeding assessed at Rs.5 (five) lakhs only from the Respondent, ONGC, and an Award for Rs.5 (five) lakhs for Costs is accordingly passed. Counter-Claims are dismissed.

Sd/- 1. ; 2.; 3. Dt/- 21.11.2004"

3. Aggrieved by the award, the appellant filed an application (i.e., Misc. (Arbitration) Case no.26 of 2005), under Section 34 of 1996 Act, for setting aside the award by taking various pleas including the one that clause 18.1 of the agreement does not allow payment of interest on the claim.

4. The District Judge allowed the application and set aside the award, *vide* order dated 15.11.2007, *inter alia*, on two grounds: (a) the award is non-reasoned, therefore, violates the mandate of Section 31(3) of 1996 Act; and (b) objection under Section 16(2) was neither rejected prior to proceeding further, nor considered by the arbitral tribunal at the time of making final award.

5. Aggrieved therewith, respondent filed an appeal before the High Court under Section 37(1)(c) of 1996 Act,

which was allowed by the impugned judgment and order thereby affirming the arbitral award in toto.

6. When notices were issued on the Special Leave Petition, seeking leave to appeal against the impugned order, it was limited to the extent as to whether interest on the total amount at the rate of 12 per cent could be awarded or not. The order dated 25.11.2019, issuing notice, is reproduced below:

“Issue notice limited to the extent whether the interest on total awarded amount dated 12.12.1998 at the rate of 12 per cent can be awarded or not. So far as the rest of the amount is concerned, the petitioner is willing to pay back to the respondent within a period of four weeks.

Subject to payment of the aforesaid amount, the execution proceedings shall remain stayed.”

7. In view of the limited notice learned counsel for the parties have confined their submissions to the award of interest.

SUBMISSIONS

8. The learned counsel for the appellant relied on clause 18.1 of the agreement and submitted that Section 31 (7)³ of 1996 Act, clearly provides that power of arbitral

³ Section 31. Form and contents of arbitral award. ---

(1) to (6) ...

(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 18% per centum per annum from the date of the award to the date of payment.

tribunal to award interest for the period between the date the cause of action arose up to the date of the award is subject to the agreement between the parties, therefore, in view of clause 18.1 no interest could have been awarded. Hence, the arbitral award is liable to be set aside to the extent it awards interest on the amount awarded from the date of the claim up to the date of the award.

9. Per contra, the learned counsel for the respondent submitted that clause 18.1, if read as a whole, would indicate that payment is not to be withheld if the amount is not in dispute. It is only when there is a dispute, interest is not payable on delayed payment. However, here, the arbitral tribunal has not awarded interest on pre-reference period. It awarded interest not from the date the cause of action arose, but from the date the claim was affirmed before the arbitral tribunal. In such circumstances, once it was found that balance amount on the invoices was unjustifiably withheld, payment of interest is lawful.

DISCUSSION

10. We have considered the submissions and have perused the materials on record.

ISSUE

11. Upon consideration of the submissions, in our view, the short issue which falls for our consideration is

whether clause 18.1 proscribes payment of even pendente lite interest on the sum awarded. This we say so, because, admittedly, arbitral tribunal has declined interest on the balance amount payable under the invoices from the date the cause of action arose up to the date when the statement of claim was affirmed before the arbitral tribunal.

Law regarding payment of interest by arbitral tribunal

12. Sub-section (7) of Section 31 of 1996 Act deals with award of interest when the arbitral award is for the payment of money. Sub-section (7) has two clauses. Clause (a) deals with interest for the period between the date on which the cause of action arose and the date on which the award is made. Clause (a) says that when the 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. However, arbitral tribunal's power to award interest for the aforesaid period is subject to the agreement between the parties. Therefore, if the agreement stipulates that no interest is payable, the arbitral tribunal cannot award interest for the aforesaid period and an award contrary to the terms of the contract would be vulnerable to a

challenge under Section 34 of 1996 Act.⁴ Moreover, such an agreement to waive interest is not ultra vires in terms of Section 28 of the Contract Act, 1872⁵. However, if the agreement is silent on award of interest, the arbitral tribunal can award interest in terms of clause (a) of sub-section (7) of Section 31⁶. As far as clause (b) of sub-section (7) of Section 31 is concerned, it deals with post-award interest. Prior to 2015 amendment, clause (b) mandated payment of interest on the sum awarded at the rate of 18% per annum from the date of the award to the date of payment, unless the award directed otherwise. Interestingly, clause (b) is not subject to an agreement between the parties and, therefore, if the arbitral award is with regard to payment of money, it would carry interest at such rate as the arbitral award directs and if it is not so directed, it would carry statutorily prescribed rate of interest from the date of the award till the date of payment. In a nutshell, the arbitral tribunal has jurisdiction to award interest for three distinct periods, namely, pre-reference, pendente lite, and future i.e., post-award. Award of pre-reference and pendente-lite

⁴ See: Union of India v. Bright Power Projects (India) Private Limited, (2015) 9 SCC 695, paragraph 13; Sayeed Ahmed and Company v. State of Uttar Pradesh and others, (2009) 12 SCC 26, paragraphs 15 and 16; Sree Kamatchi Amman Constructions v. Divisional Railway Manager (Works), Palghat and others, (2010) 8 SCC 767, paragraph 19

⁵ See: Garg Builders v. Bharat Heavy Electricals Limited, (2022) 11 SCC 697, paragraphs 20 to 23.

⁶ See: Jaiprakash Associates Limited (JAL) through its Director v. Tehri Hydro Development Corporation (India) Ltd. (THDC), (2019) 17 SCC 786, paragraph 13.2; Pam Developments Private Limited v. State of West Bengal and another, (2024) 10 SCC 715.

interest is subject to the agreement between the parties whereas post award interest is statutorily governed and is not subject to the agreement between the parties. In other words, clause (b) does not give the parties the right to 'contract out' interest for the post award period.⁷

Rate of interest is reasonable

13. In the instant case, the rate of interest awarded is 12% per annum. This appears reasonable being lower than the statutorily prescribed rate then prevalent under clause (b) of sub-section (7) of Section 31.

Crux of the issue

14. However, the arbitral tribunal has awarded interest not from the date of the award (i.e., 21.11.2004), but from 12.12.1998 (i.e., the date when the statement of claim was affirmed before the arbitral tribunal). Thus, what is in issue is the award of interest pendente lite on the sum awarded. We would therefore consider whether the agreement proscribed payment of interest on the sum awarded between the date on which the cause of action arose and the date on which the award is made. In this context, the appellant has relied on clause 18.1 of the agreement.

Clause 18.1 of the agreement reads thus:

"Corporation agrees to arrange remittance of payment under this contract within 30 days from the date of

⁷ R.P. Garg v. Chief General Manager, Telecom Department and Others, 2024 SCC OnLine SC 2928, paragraph 11.

receipt of invoice from contractor duly certified by the authorized representative of the Corporation subject always to Corporation's right to require contractor to furnish it with satisfactory evidence of the validity and prior payment by Contractor of all labor and material incurred by Contractor and charged to Corporation. Should corporation question any item or items of an invoice, it may withhold payment of the amount in dispute until such matter is resolved between the parties, but the amount not in dispute is to be paid within above period. No interest shall be payable by ONGC on any delayed payment /disputed claim.”

(Emphasis supplied)

15. Relying on the underscored portion of clause 18.1 reproduced above, the learned counsel for the appellant contended that the agreement proscribed payment of interest on any delayed payment including disputed claim, therefore, the award of interest for any period before making of the award is illegal. On the contrary, submission on behalf of the respondent is that the clause does not proscribe payment of pendente lite interest, therefore, the arbitral tribunal has discretion to award interest from the date the statement of claim is affirmed before it.

Clause 18.1 does not bar award of interest pendente lite

16. To properly appreciate the import of clause 18.1 (supra) in the agreement, particularly, in the context of submissions made, it would be useful to consider few decisions of this Court on the issue as to when the bar

on award of interest can be inferred from the terms of the agreement between the parties.

17. In **Irrigation Deptt., State of Orissa v. G.C. Roy**⁸ in the context of Arbitration Act 1940 (for short 1940 Act), a Constitution Bench of this Court observed that if the arbitration agreement or the contract itself provides for award of interest on the amount found due from one party to the other, no question regarding the absence of arbitrator's jurisdiction to award the interest could arise as in that case the arbitrator has power to award interest pendente lite as well. Similarly, where the agreement expressly provides that no interest pendente lite shall be payable on the amount due, the arbitrator has no power to award pendente lite interest. However, where the agreement between the parties does not prohibit grant of interest and where a party claims interest and that dispute along with the claim for principal amount or independently is referred to the arbitrator, he shall have the power to award interest pendente lite. This is so, because it must be presumed that interest was an implied term of the agreement between the parties and therefore when the parties refer all the disputes - or refer the dispute as to interest as such - to the arbitrator, he shall have the power to award interest. This does not mean that in every case the arbitrator should necessarily

⁸ (1992) 1 SCC 508

award interest pendente lite. It is a matter within his discretion to be exercised in the light of all the facts and circumstances of the case, keeping the ends of justice in view.

18. In **Union of India v. Ambica Construction⁹ (for short Ambica First)**, a three-Judge Bench of this Court was called upon to consider, in the context of the provisions of Arbitration Act, 1940, the power of the arbitrator to award pendente lite interest when contract contains a bar for grant of interest. After considering several decisions including Constitution Bench decisions of this Court in **G.C. Roy (supra)** and **Dhenkanal Minor Irrigation Division v. N.C. Budharaj¹⁰**, it was, *inter alia*, held: (i) the arbitrator is not a court; (ii) the arbitrator decides the disputes as per the agreement entered into between parties; (iii) arbitration is an alternative forum for resolution of disputes but an arbitrator *ipso facto* does not enjoy or possess all the powers conferred on the courts of law; (iv) where the agreement expressly provides that no interest pendente lite shall be payable on the amount due, the arbitrator has no power to award pendente lite interest; (v) the bar to award interest on delayed payment by itself will not be readily inferred as express bar to award pendente-lite interest by the

⁹ (2016) 6 SCC 36

¹⁰ (2001) 2 SCC 721

arbitral tribunal, as ouster of power of the arbitrator has to be considered on various relevant aspects; (vi) grant of pendente lite interest may depend upon several factors such as phraseology used in the agreement, clauses conferring power relating to arbitration, nature of claim and dispute referred to arbitrator and on what items power to award interest been taken away and for which period.

19. In **Ambica Construction v. Union of India**¹¹ (for short **Ambica Second**), a question arose before a two-Judge Bench of this Court whether clause (2) in the agreement barred award of pendente lite interest. Clause (2) under consideration there was in the following terms: “*(2) Interest on amounts.- No interest will be payable upon the earnest money or the security deposit or amounts payable to the contractor under the contract, but government securities deposited in terms of sub-clause (1) of this clause will be repayable with interest accrued thereon.*” Following three-Judge Bench decision of this Court in **First Ambica (supra)**, where it was held that the bar to award interest on the amounts payable under the contract, would not be sufficient to deny payment of pendente lite interest, this Court held that the said clause did not bar award of pendente lite interest.

¹¹ (2017) 14 SCC 323

20. In **Reliance Cellulose Products Limited v. Oil And Natural Gas Corporation**¹² a two-Judge Bench of this Court, in the context of an award under the 1940 Act, was called upon to consider whether pendente lite interest was barred in view of clause 16 in the contract between the parties. Clause 16 was in the following terms: “*16. Our standard terms of payment are within 30 days of receipt of stores and inspection at site. But any delay in payment will not make the Commission liable for any interest.*” Construing the said clause, it was held:

“15. ...Clause 16 of the General Conditions of Contract only speaks of any delay in payment not making ONGC liable for interest. There is nothing in this clause which refers even obliquely to the arbitrator’s power to grant interest. ...”

While holding so, decisions of this Court, *inter alia*, in **Ambica First** (supra) and **Ambica Second** (supra) were considered and relied, and the interest proscribing clauses in **Sayeed Ahmed & Co.** (supra)¹³ and **Tehri Hydro Development Corp. Ltd. v. Jai Prakash Associates Ltd.**¹⁴ (for short THDC first) were contrasted with Clause 15 reproduced above.

21. In **Sayeed Ahmed & Co. (supra)**, the interest proscribing clause was in following terms:

“Clause G. I.09. No claim for interest or damages will be entertained by the Government with respect to any

¹² (2018) 9 SCC 266

¹³ See Footnote 6

¹⁴ (2012) 12 SCC 10

money or balance which may be lying with the Government or any becoming due owing to any dispute, difference or misunderstanding between the Engineer-in-Charge on the one hand and the contractor on the other hand or with respect to any delay on the part of the Engineer-in-Charge in making periodical or final payment or any other respect whatsoever.”

(Emphasis supplied)

Construing the said clause, this Court held:

“15. Clause G 1.09 makes it clear that no interest or damages will be paid by the government, in regard to:

- (i) any money or balance which may be lying with the Government;
- (ii) any money which may become due owing to any dispute, difference or misunderstanding between the Engineer-in-Charge on the one hand and the contractor on the other hand;
- (iii) any delay on the part of the Engineer-in-Charge in making periodical or final payment; or
- (iv) any other respect whatsoever.

The clause is comprehensive and bars interest under any head in clear and categorical terms.

16. In view of clause (a) of sub-section (7) of Section 31 of the Act, it is clear that the arbitrator could not have awarded interest up to the date of the award, as the agreement between the parties barred payment of interest. The bar against award of interest would operate not only during the pre- reference period, that is, up to 13.3.1997 but also during the pendente lite, that is, from 14.3.1997 to 31.7.2001.”

22. In **THDC First (supra)**, the interest proscribing clauses in the contract were in the following terms:

“1.2.14. *No claim for delayed payment due to dispute, etc.*-- The contractor agrees that no claim for interest on damages will be entertained or payable by the Government in respect of any money or balances

which may be lying with the Government owing to any disputes, differences or misunderstandings between the parties or in respect of any delay or omission on the part of the Engineer-in-Charge in making immediate or final payments or in any respect whatsoever.

1.2.15. *Interest on money due to the contractor.*-- No omission on the part of the engineer in charge to pay the amount due upon measurement or otherwise shall vitiate or make void the contract, nor shall the contractor be entitled to interest upon any guarantee or payments in arrears nor upon any balance which may on the final settlement of his accounts be due to him."

(Emphasis supplied)

Construing the aforesaid clause, this Court held:

"14. ... A reading of the aforesaid two clauses of the contract agreement between the parties clearly reveal that despite some overlapping of the circumstances contemplated by the two clauses, no interest is payable to the contractor for delay in payment, either, interim or final, for the works done or on any amount lying in deposit by way of guarantee. The aforesaid contemplated consequence would be applicable both to a situation where withholding of payment is on account of some dispute or difference between the parties or even otherwise.

19. Clauses 1.2.14 and 1.2.15 already extracted and analyzed, imposed a clear bar on either entertainment or payment of interest in any situation of non-payment or delayed payment of either the amounts due for work done or lying in security deposit. On the basis of the discussions that have preceded we, therefore, take the view that the grant of pendente lite interest on the claim of Rs.10,17,461 lakhs is not justified. The award as well as the orders of the courts below are accordingly modified to the aforesaid extent."

23. In **Jaiprakash Associates Ltd. v. Tehri Hydro Development Corporation (India) Ltd.**¹⁵ (for short **THDC Second**), interpreting identical interest proscribing clauses, the Court held that interest cannot be awarded by the arbitrator.

24. In **Ferro Concrete Construction (India) Pvt. Ltd. v. State of Rajasthan**¹⁶ , a two-Judge Bench of this Court, of which one of us (P.S. Narasimha, J) was a member, after considering several decisions held:

“13. From the above extracted paragraphs, the decision of the three-Judge Bench in the *First Ambika case* (supra) can be stated as follows. The arbitrator’s power to grant interest would depend on contractual clause in each case, and whether it expressly takes away the arbitrator’s power to grant *pendente lite* interest. This would have to be determined based on the phraseology of the agreement, clauses conferring powers relating to arbitration, nature of claim and dispute referred to the arbitrator, and on what items the power to award interest is contractually barred and for which period. Further, a bar on award of interest for delayed payment would not be readily inferred as an express bar to the award of *pendente lite* interest by the arbitrator.”

25. On a careful analysis of the decisions discussed above, we are of the view that arbitral tribunal can be denuded of its power to award *pendente lite* interest only if the agreement/ contract between the parties is so worded that the award of *pendente lite* interest is either

¹⁵ See Footnote 6

¹⁶ 2025 SCC OnLine SC 708

explicitly or by necessary implication (such as in the case of **Sayeed & Co. (supra)** and **THDC First (supra)**) barred. A clause merely barring award of interest on delayed payment by itself will not be readily inferred as a bar to award pendente-lite interest by the arbitral tribunal.

26. Seen in light of the discussion above, Clause 18.1, which appellant relies upon to canvass that the agreement between the parties proscribes grant of pendente-lite interest, when read as a whole, does not expressly or by necessary implication proscribes grant of pendente lite interest by the arbitral tribunal. The clause merely says that there would be no interest payable by the Corporation on any delayed payment / disputed claim. Neither it bars the arbitral tribunal from awarding pendente lite interest nor it says that interest would not be payable in any respect whatsoever as was the phraseology of the interest proscribing clause in **Sayeed Ahmed & Co. (supra)** and **THDC First (supra)**. In our view, therefore, Clause 18.1 would not limit the statutory power of the arbitral tribunal to award pendente-lite interest. Consequently, we find no such error in the award of pendente lite interest as may warrant interference with the award. Since post-award interest is in line with the statutory provision of clause (b) of sub-section (7) of Section 31 as was in vogue then, we find no

merit in the appeal, and the same is, accordingly, dismissed.

27. Pending applications, if any, stand disposed of.

.....J.
(PAMIDIGHANTAM SRI NARASIMHA)

.....J.
(MANOJ MISRA)

New Delhi;
September 02, 2025