

Supreme Court Upholds The Entitlement To Post-Award Interest Under Section 31(7)(b) Of The Arbitration Act

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Introduction

In the recent judgment of ***R.P. Garg v. The Chief General Manager, Telecom Department***¹ the Supreme Court of India addressed the issue of whether a party is entitled to post-award interest despite the presence of a contractual clause barring interest. The Apex Court, while interpreting Section 31(7)(b) of the Arbitration and Conciliation Act, 1996 ("**Arbitration Act**"), held that a sum awarded by an arbitrator must carry post-award interest, even if the underlying contract prohibits the payment of interest.

Brief Facts

The case arose out of a contract executed on October 17, 1997, between the appellant, R.P. Garg, and the Telecom Department of Haryana (the respondents). The contract involved trenching and laying underground cables, for which the appellant was required to furnish a security of INR 10 lakhs. During the execution of the contract, disputes emerged regarding non-payment of bills submitted by the appellant, and the matter was referred to arbitration on October 24, 2000 under Section 11 of the Arbitration Act.

On March 8, 2001, the arbitrator passed an award in favour of the appellant but denied post-award interest, citing a clause in the arbitration agreement that prohibited the payment of interest on amounts payable under the contract. The appellant contested this denial, arguing that the contractual prohibition should not extend to post-award interest. The matter went through various levels of judicial scrutiny, ultimately reaching the Supreme Court.

The core issue before the Supreme Court was whether the arbitrator's denial of post-award interest, based on a contractual clause prohibiting interest, was legally sustainable under the Arbitration Act. The appellant argued that Section 31(7)(b) of the Arbitration Act entitles the award-holder to post-award interest by default, unless the award explicitly states otherwise.

The High Court of Punjab and Haryana, however, had ruled in favour of the respondent, relying on the contract's specific provision that barred any interest on payments made under the contract. The High Court referred to the Supreme Court's decision in ***Jaiprakash Associates Ltd. v. Tehri Hydro Development Corporation (India) Ltd.***² to conclude that contractual clauses prohibiting interest must be upheld.

Findings of the Supreme Court

The Supreme Court took a different view than the High Court. The Apex Court began by noting the distinction between interest awarded for the pre-award period and interest for the post-award period under Section 31(7) of the Arbitration Act. Sub-section (a) of Section 31(7) deals with pre-award interest, where the arbitrator's discretion is subject to the parties'

¹ *R.P. Garg v. The Chief General Manager, Telecom Department & Ors.*, 2024 INSC 743.

² *Jaiprakash Associates Ltd. v. Tehri Hydro Development Corporation (India) Ltd.*, (2019) 17 SCC 786.

agreement. However, sub-section (b), which governs post-award interest, is not constrained by such party autonomy.

The Supreme Court emphasised that while parties can contract out of pre-award interest under Section 31(7)(a), they cannot contract out of post-award interest under Section 31(7)(b). The statutory scheme under Section 31(7)(b) creates a mandatory entitlement to post-award interest, unless the arbitral award itself explicitly states otherwise. Importantly, the phrase "unless the award otherwise directs" in Section 31(7)(b) only qualifies the rate of post-award interest, not the entitlement to interest itself.

Referring to its earlier decision in ***Morgan Securities & Credits (P) Ltd. v. Videocon Industries Ltd.***³, the Supreme Court reiterated that the arbitrator has wide discretion to grant pre-award interest, but the entitlement to post-award interest is almost automatic unless specifically excluded by the award. The Court rejected the High Court's reliance on ***Jaiprakash Associates (supra)***, distinguishing that case as pertaining to pendente lite interest, not post-award interest.

Accordingly, the Supreme Court restored the judgment of the District Court, which had granted the appellant post-award interest at 18% per annum from the date of the award until its realization. The Supreme Court held that the High Court had erred in interpreting the contractual prohibition of interest as extending to the post-award period. Under Section 31(7)(b) of the Arbitration Act, the appellant was entitled to post-award interest, and the contractual clause could not override this statutory entitlement.

Comments

This decision reinforces the principle that parties cannot completely oust the statutory provisions of the Arbitration Act, particularly when it comes to post-award interest. By reaffirming the automatic application of post-award interest under Section 31(7)(b), the Supreme Court has bolstered the rights of award-holders, ensuring that they are compensated adequately for the time taken to realise the amounts due under an arbitral award.

³ *Morgan Securities & Credits (P) Ltd. v. Videocon Industries Ltd.*, (2023) 1 SCC 602.

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