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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **FAO 209/2019**
DELKON (INDIA) PRIVATE LIMITEDAppellant
Through: Mr.R. Rangarajan, Advocate

versus

BHARAT HEAVY ELECTRICALSRespondent
Through: Ms.Mani Gupta and Ms.Sonali Jain,
Advocates

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

% **29.07.2026**

1. The present appeal has been preferred under Section 37 of the Arbitration and Conciliation Act, 1996 (hereinafter, 'the Act') assailing the judgment dated 03.01.2019 passed by the learned District & Sessions Judge, South-East, Saket Courts, New Delhi in Arbitration Petition No.398/2016, whereby the objections filed by the respondent under Section 34 of the Act was partly allowed. By the impugned judgment, the learned District Judge upheld the arbitral award dated 05.02.2008 in respect of all claims except Claim No.6 relating to interest, which came to be set aside.
2. The challenge in the present appeal is thus confined to the findings returned by the learned District Judge on the issue of interest awarded by the learned Sole Arbitrator. The appellant seeks restoration of the award insofar as it grants interest under Claim No.6.
3. The appellant was awarded a contract by the respondent for handling, transportation, erection, testing, commissioning and trial operation of Electrostatic Precipitators for Boiler No.7 at Renusagar Thermal Power



Station, Uttar Pradesh pursuant to Contract Agreement No.37/96 dated 05.04.1996. The contract value was Rs.19,74,900/-.

4. Disputes arose between the parties during execution of the contract. Invoking Clause 33 of the agreement, the appellant sought reference of disputes to arbitration. As the respondent failed to appoint an arbitrator, the appellant approached this Court, whereupon a learned Sole Arbitrator came to be appointed under Section 11 of the Act.

5. Before the learned Arbitrator, the appellant preferred seven claims, namely, damages for breach of contract, release of withheld payments, overrun charges, extra work, price escalation, interest and costs. By the award dated 05.02.2008, Claim No.1 was rejected while Claims Nos.2 to 7 were allowed wholly or partly. Under Claim No.6, the learned Arbitrator awarded interest @15% per annum on the principal sum of Rs.4,41,572.74 till the date of the award, quantified at Rs.6,97,959.06, with a further direction that if the awarded interest was not paid within eight weeks, interest at the same rate would continue till actual payment.

6. Aggrieved thereby, the respondent preferred objections under Section 34 of the Act. Significantly, the respondent accepted the award insofar as Claim No.5 was concerned and questioned only Claims Nos.2, 3, 4, 6 and 7, though Claims Nos.2 and 4 were challenged only to a limited extent. Upon consideration of the rival submissions, the learned District Judge upheld the award in respect of all claims except Claim No.6 relating to interest.

7. The learned District Judge held that Clause 17 of the General Conditions of Contract expressly prohibited payment of interest on earnest money, security deposit or any money due to the contractor and, consequently, the learned Arbitrator, while exercising jurisdiction under



Section 31(7)(a) of the Act, could not have awarded pre-award interest contrary to the contractual stipulation. While arriving at the aforesaid conclusion, reliance was placed on, inter alia, Sayeed Ahmed & Company v. State of Uttar Pradesh¹, Globe Hi-Fabs Ltd.², S.L. Arora & Co. v. Union of India³, M.B. Patel & Company⁴ and other decisions dealing with contractual clauses barring payment of interest.

8. Learned counsel appearing for the appellant submitted that the award of interest formed part of the discretionary jurisdiction vested in the arbitral tribunal under Section 31(7) of the Act and the interpretation adopted by the learned Arbitrator was a plausible one, which could not have been interfered with in proceedings under Section 34. It was further submitted that Clause 17 does not constitute an absolute bar against payment of interest on amounts adjudicated and awarded by an arbitral tribunal. According to the appellant, the embargo contained therein is confined to earnest money, security deposit and amounts retained during execution of the contract and cannot be extended to monetary claims determined by an arbitral award. It was urged that the impugned judgment is contrary to the settled principle that courts exercising jurisdiction under Section 34 do not sit in appeal over arbitral awards and cannot interfere merely because another interpretation of the contract is possible.

9. *Per contra*, learned counsel for the respondent supported the impugned judgment and submitted that Clause 17 expressly prohibited payment of interest "on earnest money, security deposit or any money due to

¹ (2009) 12 SCO 26

² (2015) 5 SCC 718

³ (2010) 3 SCC 690

⁴ (2008) 8 SCC 251



the contractor". It was contended that once the parties had consciously contracted out of payment of pre-award interest, the learned Arbitrator, being bound by the terms of the contract under Section 28(3) of the Act, lacked jurisdiction to award the same. It was further submitted that the learned District Judge correctly distinguished between pre-award interest governed by Section 31(7)(a) and post-award interest governed by Section 31(7)(b), and rightly interfered only to the extent the award granted pre-award interest in derogation of the contractual stipulation.

10. I have heard learned counsel for the parties and perused the record.

11. Before examining the rival submissions, it would be apposite to notice the well-settled contours of judicial interference with arbitral awards under Sections 34 and 37 of the Act.

12. The Arbitration and Conciliation Act, 1996 is founded on the principle of minimal judicial intervention. The jurisdiction exercised by a Court under Section 34 is supervisory in nature and not appellate. The Court is not expected to reassess the evidence or substitute its own interpretation for that of the arbitral tribunal merely because another view is possible. Interference is warranted only on the limited grounds enumerated in Section 34 of the Act. Further, the Supreme Court in MMTC Ltd. v. Vedanta Ltd.⁵, while considering the scope of Section 37, observed that an appeal under Section 37 is even more circumscribed than proceedings under Section 34. The appellate Court does not exercise a first appellate jurisdiction but merely examines whether the Court exercising jurisdiction under Section 34 has acted within the confines of the statute.

⁵ (2019) 4 SCC 163



13. The only issue requiring consideration is whether the learned District Judge was justified in setting aside the award insofar as it granted interest under Claim No.6.

14. The learned Arbitrator awarded interest @15% per annum on the principal amount found payable to the appellant from the date of accrual of the cause of action till the date of the award. The learned District Judge held that such award of pre-award interest was contrary to Clause 17 of the contract and therefore liable to be interfered with under Section 34 of the Act.

15. The respondent has submitted that the language employed in Clause 17 is explicit and comprehensive. It is contended that the expression "or any money due to the contractor" leaves no scope for limiting the embargo only to earnest money or security deposits. According to the respondent, Section 31(7)(a) itself recognises party autonomy by providing that an arbitral tribunal may award pre-award interest "*unless otherwise agreed by the parties*". Once the parties consciously excluded payment of pre-award interest by contract, the learned Arbitrator was bound by such stipulation in view of Section 28(3) of the Act and could not have awarded interest contrary thereto.

16. In the opinion of this Court, the legislative intent is, therefore, clear that party autonomy prevails in the matter of pre-award interest. Where the contract contains an express stipulation regulating or prohibiting payment of such interest, the arbitral tribunal is ordinarily bound to give effect to the contractual bargain.

17. The controversy essentially turns upon the interpretation of Clause 17 of the contract read with Section 31(7)(a) of the Act. The said provision



empowers an arbitral tribunal to award interest "*unless otherwise agreed by the parties*". Thus, unlike other provisions governing the merits of the dispute, the legislature has expressly accorded primacy to party autonomy in the matter of pre-award interest.

18. The expression "unless otherwise agreed by the parties" occurring in Section 31(7)(a) is not merely enabling but restrictive in nature. It recognizes the freedom of contracting parties to exclude, regulate or limit the grant of interest for the period preceding the award. Once such exclusion is found in the contract, the arbitral tribunal is required to give effect to the bargain struck between the parties.

19. In the present case, Clause 17 categorically stipulates that no interest shall be payable on earnest money, security deposit or any money due to the contractor. The language employed is unambiguous and does not admit of any exception insofar as pre-award interest is concerned. The parties, both being commercial entities, consciously entered into the contract with full knowledge of its terms. It is not the appellant's case that Clause 17 was unconscionable, opposed to public policy or otherwise unenforceable.

20. The submission of the appellant that the embargo contained in Clause 17 ought to be confined only to earnest money and security deposits cannot be accepted. The clause, after referring to earnest money and security deposit, further employs the expression "or any money due to the contractor". Such words are wide terms and cannot be rendered otiose by restricting their operation only to deposits or retained amounts. The Supreme Court, while interpreting similarly worded clauses, has consistently held that where the contract expressly prohibits payment of interest, the arbitral



tribunal cannot award pre-award interest in disregard of the contractual stipulation.

21. It is true that the learned Arbitrator interpreted Clause 17 differently and proceeded to award interest at the rate of 15% per annum. However, where the arbitrator grants a relief expressly prohibited by the contract, such award travels beyond the contractual framework governing the parties. An arbitral tribunal derives its authority from the contract and cannot ignore or rewrite its terms. Section 28(3) of the Act mandates that the arbitral tribunal shall decide in accordance with the terms of the contract. Consequently, an award rendered in disregard of an express contractual prohibition cannot be sustained.

22. The learned District Judge has examined the contractual stipulation, the statutory scheme under Section 31(7), as well as the law laid down by the Supreme Court, and thereafter confined interference only to that part of the award which granted pre-award interest contrary to Clause 17. Significantly, the remaining findings of the learned Arbitrator were left undisturbed. The exercise undertaken by the learned District Judge cannot be said to amount to a re-appreciation of evidence or substitution of the arbitrator's view merely because another interpretation was possible. Rather, the interference was limited to correcting an award which was found to be inconsistent with the express contractual stipulation binding upon the parties.

23. This Court is also unable to accept the contention that the learned District Judge exceeded the limits of Section 34. The interference is founded not upon a reassessment of facts but upon the finding that the learned Arbitrator awarded a relief expressly excluded by the contract. Such an



exercise falls within the supervisory jurisdiction contemplated under Section 34 of the Act and does not warrant interference in an appeal under Section 37.

24. In the present case, therefore, this Court finds no infirmity in the conclusion reached by the learned District Judge that the award of pre-award interest under Claim No.6 could not be sustained in view of the contractual bar contained in Clause 17.

25. Accordingly, the present appeal, being devoid of merit, is dismissed. The judgment dated 03.01.2019 passed by the learned District & Sessions Judge, South-East, Saket Courts, New Delhi in Arbitration Petition No.398/2016 is affirmed.

26. Pending applications, if any, also stand disposed of.

MANOJ KUMAR OHRI, J

JULY 29, 2026

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corrected and released on 22.08.2026.