

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3148 OF 2012

M/S. HYDER CONSULTING (UK) LTD. ... APPELLANT

VERSUS

GOVERNOR, STATE OF ORISSA
THROUGH CHIEF ENGINEER ... RESPONDENT

WITH

CIVIL APPEAL NO. 3147 OF 2012

CIVIL APPEAL NO. 3149 OF 2012

CIVIL APPEAL NO. 1390 OF 2013

S.L.P. (C) NO. 19895 OF 2008

S.L.P. (C) NO. 20282 OF 2008

S.L.P. (C) NO. 21896 OF 2010

S.L.P. (C) NO. 18614 OF 2012

JUDGMENT

H.L. DATTU, CJI.

Signature Not Verified

Digitally signed by
Charanjeet Kaur

1.

Date: 2014.12.04

11:23:13 IST

Reason:

In view of the reference order dated 13.03.2012,

this Civil Appeal and the matters connected therewith are

placed before a three-Judge Bench¹ of this Court for consideration and decision. The question before this Court is, whether the decision of this Court in State of Haryana and Others v. S.L. Arora and Company., (2010) 3 SCC 690, wherein it is held that an award of interest on interest from the date of award is not permissible under sub-section (7) of section 31 of the Arbitration and Conciliation Act, 1996 (for short, "the Act, 1996"), is in consonance with earlier decisions of this Court. A two-Judge Bench of this Court, by the said reference order, is of the opinion that the present appeal and

the connected matters would need to be heard by a Bench of three Judges of this Court.

2. By the referral order dated 13.03.2012, it is found that the learned counsel for the appellants therein would doubt the correctness of the decision in the S.L. Arora case (supra) in light of McDermott International INC v. Burn Standard Co. Ltd. and Others, (2006) 11 SCC 181; Uttar Pradesh Cooperative Federation Limited v.

2

Three Circles, (2009) 10 SCC 374; Oil and Natural Gas Commission v. M.C. Clelland Engineers S.A., (1999) 4 SCC 327; and Central Bank of India v. Ravindra and Others, (2002) 1 SCC 367. Therein, the appellants would contend that, in accordance with the decision of this Court in the aforementioned cases, the interest awarded on the principal amount upto the date of award, becomes the principal amount for the purposes of awarding future interest under the Act, 1996. The appellants would contend that the decision in the S.L. Arora case (supra) inadvertently and erroneously assumed that the aforementioned cases would not be applicable to it. Since the decision in the S.L. Arora case (supra) negated the above stated principle, the appellants would contend that the said case would require reconsideration by a larger Bench of this Court.

FACTS :

Civil Appeal No.3148 of 2012

3

3. The present civil appeal came before a two-Judge Bench of this Court against a judgment and final order dated 28.07.2010, passed by the High Court of Orissa at Cuttack in Writ Petition (Civil) No. 5302 of 2009. The said Writ Petition was filed challenging the orders dated

19.02.2009 and 26.03.2009, passed by the District Judge, Khurda in Execution Petition No. 17 of 2006, whereby the learned District Judge had issued order of attachment in favour of the appellant herein. The claim in the execution petition was for the payment of Rs.8,92,15,993/-. The said claim included in itself post award interest on the aggregate of the principal amount awarded by the arbitral award and interest pendente lite thereon. By virtue of arbitral award dated 26.04.2000, which was upheld by the Division Bench of the High Court of Orissa by its order dated 28.06.2006, a principal amount of Rs.2,30,59,802/- was awarded in favour of the appellant herein. The said impugned judgment of the High Court of Orissa dated 28.07.2010, inter alia, relied upon the decision of this Court in the S.L. Arora case (supra)

4

and quashed the orders passed by the learned District Judge, whereby Rs.8,92,15,993/- was awarded in favour of the appellant. The learned Judges of the High Court, vide the impugned judgment, directed the executing court to re-calculate the total amount payable under the award keeping in view the principles laid down in the S.L. Arora case (supra).

4. According to the referral order dated 13.03.2012, the appellants contended that the S.L. Arora case (supra) was based on an inadvertent erroneous assumption that McDermott case (supra) and the Three Circles case (supra) were per incuriam in holding that interest awarded on the principal amount upto the date of award becomes the principal amount and, therefore, award of future interest thereon would not amount to award of interest on interest. The S.L. Arora case (supra) held contrary to the aforementioned principle. To support their

contention, the appellants also made a reference to the

5

ONGC case (supra) and the Central Bank of India case (supra).

ISSUES :

5. The issues that arise for the consideration of this Court are firstly, whether in light of the Three Circles case (supra) and McDermott case (supra) there exists any infirmity in the decision rendered by this Court in the S.L. Arora case (supra); and secondly to determine whether sub-section (7) of section 31 of the Act, 1996 could be interpreted to include interest pendente lite within the sum payable as per the arbitral award, for the purposes of awarding post-award interest.

SUBMISSIONS :

6. Shri K.K. Venugopal, learned Senior Counsel appearing for the appellants herein, in the first instance, would submit that the decision in the S.L. Arora case (supra) was incorrect in ignoring the earlier

6

decisions of this Court, namely the Three Circles case (supra), the McDermott case (supra), the ONGC case (supra) and the Central Bank of India case (supra). In light of the aforesaid latter cases, it is contended that the S.L. Arora case (supra) wrongly held that the interest as envisaged under clause (b) of sub-section (7) of section 31 of the Act, 1996 would apply only on the principal amount awarded by the arbitral tribunal. Shri K.K. Venugopal would further refer to the 246th Report of the Law Commission of India titled as 'Amendments to the Arbitration and Conciliation Act, 1996' in support of

the above contention.

7. The submissions of Shri K.K. Venugopal could be summarized as follows- firstly, that under clause (a) of sub-section (7) of section 31 of the Act, 1996, the award is for money and the sum for which the award is made would include within it, the interest that may be awarded for the period from the date of cause of action to the date of award; secondly, that under clause (b) of

7

sub-section (7) of section 31 of the Act, 1996, the sum directed to be paid by the arbitral award is the sum awarded, which is inclusive of interest pendente lite; thirdly, that there may be scenarios wherein an award would be made only for interest as the claim would relate only to interest and in such a case 18% per annum interest would automatically attach to the given award; fourthly, that the transaction on which the claim is made and the money is so awarded, merges with the award and ceases to be the principal amount, so that interest under clause (b) would be the totality; fifthly, that the comparison of the amended section 34 of the Code of Civil Procedure, 1908 would show that unless the phrase 'principal amount' is used in clause (a) for 'sum' and again 'principal amount' is used in clause (b) for 'sum', the word 'sum' would be the aggregate of the principal amount and interest; sixthly, that the entirety of commercial transactions would be seriously affected if a judgment debtor were to delay the payment of interest on the total amount, as the gain to the judgment debtor on

8

that element of interest is a loss to the claimant for which he has no recourse; seventhly, the S.L. Arora case (supra) was wrongly decided as the judgment is contrary to the Act, 1996 on the grounds, inter alia, that it

would be a misnomer to state that interest would not be applicable on substantive claims as the same finds no mention in the given provision; and lastly, 18% interest would be applicable proprio vigore unless stopped by the award itself.

8. Per contra, Shri L. Nageshwara Rao, learned Senior Counsel and Additional Solicitor General of India would submit that there was no infirmity whatsoever in the S.L. Arora case (supra) and that, therefore, the present reference was not required. Furthermore, the learned Additional Solicitor General would submit that the term "sum" as found in sub-section (7) of section 31 of the Act, 1996 should be read as "principal amount" as held in the S.L. Arora case (supra).

DISCUSSION :

9

9. At the outset, it would be necessary to discuss the correctness of the reference order in light of the S.L. Arora case (supra). This Court, in the S.L. Arora case (supra), was required to adjudicate upon two primary issues namely- firstly, whether sub-section (7) of section 31 of the Act, 1996 authorised the arbitral tribunal to award interest on interest from the date of award; and secondly, whether the arbitral tribunal could grant future interest from the date of award.

10. In the S.L. Arora case (supra), this Court had sought to clarify whether the arbitral tribunal's power to grant post-award interest extended only on the principal amount or on the aggregate of the principal amount and the interest, as determined to be payable from the date of cause of action to the date of award. On perusal of sub-section (7) of Section 31 of the Act, 1996, this Court observed:

"18. Section 31(7) makes no reference to payment of compound interest or payment of interest upon

10

interest. Nor does it require the interest which accrues till the date of the award, to be treated as part of the principal from the date of award for calculating the post-award interest. The use of the words "where and insofar as an arbitral award is for the payment of money" and use of the words "the Arbitral Tribunal may include in the sum for which the award is made, interest ... on the whole or any part of the money" in Clause (a) and use of the words "a sum directed to be paid by an arbitral award shall ... carry interest" in Clause (b) of Sub-section (7) of Section 31 clearly indicate that the section contemplates award of only simple interest and not compound interest or interest upon interest. "A sum directed to be paid by an arbitral award" refers to the award of sums on the substantive claims and does not refer to interest awarded on the "sum directed to be paid by the award". In the absence of any provision for interest upon interest in the contract, the arbitral tribunals do not have the power to award interest upon interest, or compound interest, either for the pre-award period or for the post-award period."

(emphasis in original)

11

11. In the S.L. Arora case (supra), this Court highlighted that there was a tendency among contractors to elevate the claims for interest and costs to the level of substantive disputes, by categorizing them under independent heads of claim. Further, it was noticed that, since arbitrations usually have a high pendency period owing to prolonged arbitration proceedings or intervening as well as post arbitral litigations, the interest payable on the amount awarded often increases to substantial amounts, sometimes even exceeding the actual amount awarded. The Court, in the S.L. Arora case (supra), then sought to set out the legal position on the award of interest to understand the authority of the tribunal as envisioned in sub-section (7) of Section 31 of the Act, 1996.

12. The present reference requires this Court to

reconsider the decision in S.L. Arora case (supra), in light of previous decisions of this Court in the McDermott case (supra) and the Three Circles case

12

(supra). It may be reiterated that the referral order dated 13.03.2012 takes note of the contention of the appellants that the S.L. Arora case (supra) erroneously held the Three Circles case (supra) and the McDermott case (supra) to be per incuriam in holding that interest awarded on the principal amount upto the date of award becomes the principal amount.

13. Before I consider the correctness of the aforementioned decisions, it would be necessary to elaborate upon the concept of "per incuriam". The latin expression per incuriam literally means 'through inadvertence'. A decision can be said to be given per incuriam when the Court of record has acted in ignorance of any previous decision of its own, or a subordinate court has acted in ignorance of a decision of the Court of record. As regards the judgments of this Court rendered per incuriam, it cannot be said that this Court has "declared the law" on a given subject matter, if the relevant law was not duly considered by this Court in its

13

decision. In this regard, I refer to the case of State of U.P. v. Synthetics and Chemicals Ltd., (1991) 4 SCC 139, wherein Justice R.M. Sahai, in his concurring opinion stated as follows:

"40. 'Incuria' literally means 'carelessness'. In practice per incuriam appears to mean per ignoratum. English courts have developed this principle in relaxation of the rule of stare decisis. The 'quotable in law' is avoided and ignored if it is rendered, 'in ignoratum of a statute or other binding authority'. ..."

14. Therefore, I am of the considered view that a

prior decision of this Court on identical facts and law binds the Court on the same points of law in a later case. In exceptional circumstances, where owing to obvious inadvertence or oversight, a judgment fails to notice a plain statutory provision or obligatory authority running counter to the reasoning and result reached, the principle of per incuriam may apply. The

14

said principle was also noticed in the case of Fuerst Day Lawson Ltd. v. Jindal Exports Ltd., (2001) 6 SCC 356.

15. I would now analyse the decisions noticed by the referral order dated 13.03.2012, to determine the correctness or otherwise of the present reference, and consequently determine the power of an arbitral tribunal to award interest under section 31 of the Act, 1996.

16. This Court in the Three Circles case (supra), placing its reliance on earlier decisions, by its judgment, allowed the arbitral tribunal to pass an award, enforcing interest on interest. This Court observed that:

"31. Now the question comes which is related to awarding of 'interest on interest'. According to the appellant, they have to pay interest on an amount which was inclusive of interest and the principal amount and, therefore, this amounts to a liability to pay 'interest on interest'. This question is no longer res integra at the present point of time. This Court in McDermott International Inc. v. Burn Standard Co. Ltd and

15

Ors., (2006) 11 SCC 181 has settled this question in which it had observed as follows (SCC p.207, para 44):

"44. ...The Arbitrator has awarded the principal amount and interest thereon upto the date of award and future interest thereupon which do not amount to award on interest on interest as interest awarded on the principal amount upto the date of award became the principal amount which is permissible in

law."

The High Court on this question has also rightly relied on a decision of this Court in the case of Oil and Natural Gas Commission v. M.C. Clelland Engineers S.A. (1999) 4 SCC 327. That being the position, we are unable to find any ground to set aside the judgment of the Division Bench of the High Court while considering the ground of 'interest on interest'."

17. It would be crucial to note that the reliance upon the McDermott case (supra) by this Court in the Three Circles case (supra) is not in consonance with the doctrine of precedents. On a perusal of the McDermott

case (supra), it is ¹⁶ observed that the substantive proposition of that case did not address the issue on the power of the tribunal to award 'interest on interest' or compound interest. The proposition on 'interest on interest' was made only in one of the submissions of the respondent therein. The ratio decidendi of that decision merely laid down the discretion of the arbitrator to decide the rate of interest awarded under sub-section (7) of section 31 of the Act, 1996, on a part or whole of the award money. In this regard, the Court observed as follows:

"154. The power of the arbitrator to award interest for pre-award period, interest pendent lite and interest post-award period is not in dispute. Section 31(7)(a) provides that the arbitral tribunal may award 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 award is made, i.e., pre-award period. This, however, is subject to the agreement as regard the rate of interest on unpaid sum between the parties. The question

17

as to whether interest would be paid on the whole or part of the amount or whether it should be awarded in the pre-award period would depend upon the facts and circumstances of each case. The arbitral tribunal in this behalf will have to exercise its discretion as regards (i) at what rate interest should be awarded; (ii) whether interest should be awarded on whole or part of the award money; and (iii) whether interest should be awarded for whole or any part of the pre-award period.

155. The 1996 Act provides for award of 18% interest. The arbitrator in his wisdom has granted 10% interest both for the principal amount as also for the interim. By reason of the award, interest was awarded on the principal amount. An interest thereon was upto the date of award as also the future interest at the rate of 18% per annum.

156. However, in some cases, this Court has resorted to exercise its jurisdiction under Article 142 in order to do complete justice between the parties."

18

18. From the above-quoted paragraphs of the McDermott case (supra), it is abundantly clear that the decision neither makes any reference to awarding of compound interest nor does it allow post-award interest to be imposed on the aggregate of the principal claim and interest pendente lite. This Court had merely sought to clarify the position with respect to the rate of interest awarded and further the power of this Court to invoke Article 142 of the Constitution of India, 1950 to alter the said rate of interest in order to do complete justice. Thus, it is evident from paragraphs 154 to 156 of the McDermott case (supra), that the proposition surrounding arbitral tribunal's authority to award of 'interest on interest' was not deliberated upon but merely argued by the respondents therein. However, this argument was erroneously relied upon in the Three Circles case (supra) to decide upon the issue related to awarding of 'interest on interest' or compound interest.

19

19. This Court, therefore, in the S.L. Arora case (supra) has disagreed with the reasoning laid down in the McDermott case (supra) as well as the Three Circles case (supra). This Court, on perusal of the relevant paragraphs in the aforesaid decisions, held that the observations therein must be treated as per incuriam on

the issue around awarding of 'interest on interest' or compound interest. It was observed that:

"28. ...But a careful reading of the decision in Mcdermott, shows that the portion of Mcdermott extracted in Three Circles, assuming it to be the law laid down in Mcdermott, is not a finding or conclusion of this Court, nor the ratio decidendi of the case, but is only a reference to the contention of the respondent in Mcdermott.

29. Paras 1 to 27 (of the SCC report) in Mcdermott state the factual background. Paras 28 and 29 contain the submissions of the learned Counsel for BSCL, the respondent therein. Paras 30 to 44 contain the submissions made by the learned Counsel for Mcdermott, the appellant therein, in reply to the submissions made on behalf of BSCL. The passage that is extracted in

20

Three Circles is part of para 44 of the decision which contains the last submission of the learned Counsel for Mcdermott on the question of interest. The reasoning in the decision starts from para 45. This Court considered the several questions seriatim in paras 45 to 160. The question relating to interest was considered in paras 154 to 159 relevant portions of which we have extracted above. Therefore, the observation in Three Circles that Mcdermott held that interest awarded on the principal amount upto the date of award becomes the principal amount and therefore award of future interest therein does not amount to award of interest on interest, is per incuriam due to an inadvertent erroneous assumption."

20. I am in agreement with the aforesaid view in the S.L. Arora case (supra). The decision in the McDermott case (supra) would not be applicable, since it does not pertain to the issue of granting compound interest on the post-award claim. This Court, in the McDermott case (supra), did not consider the issue pertaining to award of 'interest upon interest' or compound interest. It

21

merely held that the interest must be awarded on the principal amount upto the date of award. Thus, the McDermott case (supra) would be wholly inapplicable to the issue for consideration by this Bench.

21. Further, the decision of Three circles case

(supra) did not place reliance on the ratio decidendi of the McDermott case (supra) but merely re-stated the contention raised by the respondent therein to decide upon the issue of 'interest on interest' or compound interest. Therefore, in my considered view, the Three Cirlces case (supra) would be deemed as per incuriam in regard to the concept of awarding 'interest on interest' or compound interest, due to such an inadvertent erroneous reliance upon the McDermott case (supra).

22. At this stage, it would be necessary to take into consideration, the decisions of this Court in the ONGC case (supra) as well as the Central Bank of India case (supra). It was argued, as per the referral order, that these decisions would support the proposition that

22

arbitral tribunals have the authority to award 'interest on interest' from the date of the award.

23. On perusal of the ONGC case (supra), I find that this Court has recognised and accepted the power of arbitral tribunals to award interest upon interest. This Court has considered such an award as a requisite compensatory measure for delayed payment and included such interest along with the principal amount in the 'sum' so awarded. This Court observed as follows:

"4. There cannot be any doubt that the Arbitrators have powers to grant interest akin to Section 34 of the CPC which is the power of the court in view of Section 29 of the Arbitration Act, 1940. It is clear that interest is not granted upon interest awarded but upon the claim made. The claim made in the proceedings is under two heads - one is the balance of amount claimed under invoices and letter dated February 10, 1981 and the amount certified and paid by the appellant and the second is the interest on delayed payment. That is how the claim for interest on delayed payment stood crystallized by

the time the claim was filed before the Arbitrators. Therefore, the power of the Arbitrators to grant interest on the amount of interest which may, in other words, be termed as interest on damages or compensation for delayed payment which would also become part of the principal. If that is the correct position in law, we do not think that Section 3 of the Interest Act has any relevance in the context of the matter which we are dealing with in the present case. Therefore, the first contention raised by Shri Datta, though interesting, deserves to be and is rejected."

24. However, it would be pertinent to note that the ONGC case (supra) as well as the Three Circles case (supra), both pertained to the awards under the Arbitration Act, 1940 (for short "the Act, 1940"). The Act, 1940 did not contain any specific provision dealing with the arbitrator's power to grant interest. Further, it is a settled position that the decisions of this Court regarding award of interest made under the Act, 1940 are not applicable to arbitration held under the Act, 1996. In this regard, I place reliance on the decision of this

24

Court in Sayeed Ahmed & Co. v. State of U.P. & Ors., (2009) 12 SCC 26, wherein it was observed that:

"14. The decisions of this Court with reference to the awards under the old Arbitration Act making a distinction between the pre-reference period and pendente lite period and the observation therein that arbitrator has the discretion to award interest during pendente lite period in spite of any bar against interest contained in the contract between the parties are not applicable to arbitrations governed by the Arbitration and Conciliation Act 1996."

25. Pursuant to the enactment of sub-section (7) of section 31 of the Act, 1996, the difference between pre-reference period and pendente lite period has been removed insofar as it relates to the award of interest by arbitrator, unlike the position as under the Act, 1940. It would not be appropriate for this Court, in matters pertaining to the Act, 1996, to rely upon decisions which interpreted the arbitrator's power to award interest

under the Act, 1940. This position was further reiterated

25

in *Sree Kamatchi Amman Constructions v. The Divisional Railway Manager (Works), Palghat and Ors.*, (2010) 8 SCC 767.

26. Furthermore, I take note of the fact that the aforementioned principle was applied by this Court in the *S.L. Arora* case (supra). It was explicitly stated that since the *ONGC* case (supra) and *Three Circles* case (supra) related to awards under the *Arbitration Act, 1940*, they can be of no assistance in interpreting sub-section (7) of section 31 of the Act, 1996. I concur with the above reasoning to show the inapplicability of the *ONGC* case (supra) and the *Three Circles* case (supra) to the present case.

27. The last case relied upon by the appellants herein is the *Central Bank of India* case (supra). This Court in the *Central Bank of India* case (supra), under Section 34 of the *Code of Civil Procedure, 1908* (for short, "the Code"), sought to determine whether the liability of the borrower to pay interest on the

26

principal sum, would include interest that became merged with the principal sum adjudged. This aforesaid decision discussed the scope for charging compound interest under Section 34 of the Code. The Court sought to determine the meaning attached to phrases 'principal sum adjudged' and 'such principal sum', pursuant to the 1956 amendment to the Code. Further, the Court sought to determine whether such 'principal sum' would include liability to pay compound interest thereon. However, the issue with respect to award of interest upon interest under sub-section (7) of Section 31 of the Act, 1996 was not the

subject matter in the aforesaid decision.

28. In my considered view, the Central Bank of India case (supra) cannot be relied upon by the appellants herein in support of their contention that the arbitral tribunal possessed the power to award interest on interest. The Central Bank of India case (supra) dealt with section 34 of the Code, and therefore may not be said to be wholly applicable to cases under the Act,

27

1996. However, even if the principle in the said case is held to be applicable to the Act, 1996, it would only support the view endorsed by the S.L. Arora case (supra).

29. Lastly, it would be necessary to highlight the views of the 246th Report of the Law Commission of India, which suggested amendments to the Act, 1996. On the question of 'Interest on Sums Awarded' at page 33 of the said Report, the Commission was of the opinion that the words used in sub-section (7) of Section 31 of the Act, 1996 are of wider import and the scheme of the relevant provisions indicated that the award of interest on interest is not only permitted but is also the norm. The Commission was of the view that the decision in the S.L. Arora case (supra) required reconsideration on the issue of awarding future interest on both, the principal sum as well as the interest accrued till date of the award. In light of the preceding discussion, I do not agree with the said view taken by the Commission. It is my considered opinion that the decision in S.L. Arora case

28

(supra) is sound and wholly conclusive on the interpretation of sub-section (7) of Section 31 of the Act, 1996 on the issue of awarding 'interest on interest'. The Law Commission had erred in relying upon

the ONGC case (supra) as well as the Three Circles case (supra), since these decisions are not applicable to the present arbitration held under the Act, 1996.

30. Thus, I am of the considered opinion that, since the position on the interpretation of sub-section (7) of Section 31 of the Act, 1996 regarding award of interest upon interest has been correctly decided in the S.L. Arora case (supra), the present reference may not be required. The decision of this Court in the Three Circles case (supra) was rightly held to be passed on inadvertent erroneous assumption, as stated in the S.L. Arora case (supra). The McDermott case (supra) did not deal with the question pertaining to awarding of 'interest on interest' or compound interest. Furthermore, the decision in the ONGC case (supra) pertained to the Act, 1940, and,

therefore, in light of the ²⁹ settled principle of law, would not be applicable to cases under the Act, 1996.

Lastly, the decision in the Central Bank of India case (supra) did not deal with the issue around interpretation of sub-section (7) of Section 31 of the Act, 1996, nor did the principle laid down therein hold contrary to the decision in S.L. Arora case (supra).

31. However, out of sheer deference to the learned two-Judge Bench of this Court, I would clarify the apparent controversy around sub-section (7) of section 31 of the Act, 1996. The said provision reads as follows:

"31. Form and contents of arbitral award.--

...

(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 eighteen per centum per annum from the date of the award to the date of payment."

32. On a bare perusal of the said section, I find that in the first instance, it applies only to an arbitral award which is for the payment of money. The power to award interest by the arbitral tribunal has been divided into two stages- firstly, from the date of cause of action to the date on which the arbitral award is made, and secondly, from the date of award to the date of payment. The said classification was also noticed by this Court in the Sayeed Ahmed case (supra). I will deal with these stages separately as has been provided under the said provision itself.

33. Under clause (a) of sub- section (7) of section 31 of the Act, 1996, I find that it relates to the power

31

of the arbitrator to impose interest in the first stage as mentioned hereinabove, that is, from the date of cause of action to the date of arbitral award. The said clause begins with "Unless otherwise agreed by the parties", thereby at the onset of the sub-section itself, the legislature has provided for a restriction on the application of the said sub- section. In the event there is an agreement between the parties to the arbitration, regarding the payment of interest from the date on which the cause of action arose till the date on which the award was made, the terms of the said agreement would prevail over clause (a) of sub- section (7) of section 31 of the Act, 1996. This Court, in the Sree Kamatchi Amman Constructions case (supra), observed as follows:

"19. Section 37(1)(sic) of the new Act by using the words "unless otherwise agreed by the parties" categorically clarifies that the arbitrator is bound by the terms of the contract insofar as the award of interest from the date of cause of action to the date of award. Therefore, where the parties had agreed that no interest shall be payable, the Arbitral Tribunal

32

cannot award interest between the date when the cause of action arose to the date of award."

34. In the context of the Act, 1996, the phrase "unless otherwise agreed by the parties" was explained in the case of N.S. Nayak & Sons v. State of Goa, (2003) 6 SCC 56. This Court observed that:

"14. ...The phrase "unless otherwise agreed by the parties" used in various sections, namely, 17, 21, 23(3), 24(1), 25, 26, 29, 31, 85(2)(a) etc. indicates that it is open to the parties to agree otherwise. During the arbitral proceedings, right is given to the parties to decide their own procedure. So if there is an agreement between the parties with regard to the procedure to be followed by the arbitrator, the arbitrator is required to follow the said procedure. Reason being, the arbitrator is appointed on the basis of the contract between the parties and is required to act as per the contract. However, this would not mean that in appeal parties can contend that the appellate procedure should be as per their agreement. ..."

33

35. In the event that the terms of the given contract, as applicable to the parties to the arbitration proceedings, are silent on the question of interest payable in the first stage, as given under clause (a) of sub-section (7) of section 31 of the Act, 1996, only then would the provisions of the said clause apply. The said clause thereafter gives the arbitral tribunal the discretion to include the interest in the sum for which the award was made. The principles for levying such interest are found in the said clause itself. They are as follows:

(1) Interest to be imposed at such rate as the arbitral tribunal deems reasonable;

(2) The interest may be either on the whole or any part of the money; and

(3) The interest may be 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.

34

36. I take note that the arbitral tribunal has been given the discretionary power of not only imposing interest, but also for determining the rate of interest that could be imposed from the date of cause of action to the date of the award. The arbitral tribunal has the discretion to decide whether such interest would be imposed on the whole or a part of the money awarded, and further whether it would be imposed for the entire duration from the date of cause of action to the date of award, or on a part of it. However, such discretion is not unfettered and is not exercisable upon the mere whims and fancies of the tribunal. In Principles of Statutory Interpretation, Justice G.P. Singh, Thirteenth Edition, 2012, at p.482, it has been stated as follows:

"Even where there is not much indication in the Act of the ground upon which discretion is to be exercised it does not mean that its exercise is dependent upon mere fancy of the Court or Tribunal or Authority concerned. It must be exercised in the words of Lord Halsbury, 'according to the rules of reason and justice, not according to private opinion; according to

35

law and not humour; it is to be not arbitrary, vague and fanciful, but legal and regular'."

37. It can be concluded that the discretion, whether to award interest by the arbitral tribunal under clause (a), is necessarily to be exercised as per the facts and circumstances of each case. The said discretion must be within the parameters of the statute and in accordance with the rule of law. Furthermore, the said clause states

that the rate of interest, if such interest is awarded by the arbitral tribunal, must be as the said tribunal deems reasonable. It is settled law that discretion must always be exercised lawfully.

38. At this stage, it would be relevant to consider the meaning of the words "sum" and "interest" as used in clause (a) of sub-section (7) of section 31 of the Act, 1996. It is settled principle of interpretation of statutes that while interpreting the words of a statute, the context in which they appear would be necessary to be taken into consideration. In support of the said principle of contextual ³⁶ interpretation, I refer to a Constitution Bench decision of this Court in Darshan Singh Balwant Singh v. State of Punjab, 1953 SCR 319, wherein it was observed as follows:

"10. ...It is a cardinal rule of interpretation that the language used by the legislature is the true depository of the legislative intent, and that words and phrases occurring in a statute are to be taken not in an isolated or detached manner dissociated from the context, but are to be read together and construed in the light of the purpose and object of the Act itself."

39. In the absence of a definition in the Act, 1996, I would notice that the word "sum", would simply refer to money in common parlance. Further, the dictionary meaning of the word may be taken into consideration. Webster's Third New International Dictionary, Volume III defines "sum" to mean, inter alia, the following:

"Sum: An indefinite or specified amount of money."

³⁷
Black's Law Dictionary, Seventh Edition, 1999, defines "sum" as:

"sum. 1. A quantity of money."

P. Ramanatha Aiyar's Advanced Law Lexicon, Third Edition, 2005, Book 4, defines "sum", inter alia, as the following:

"Sum. When used with reference to values, 'sum' imports a sum of money."

Corpus Juris Secundum, Volume LXXXVIII, defines the word

"sum" as follows:

"Sum. While the word 'sum' must be construed in connection with the context, it has a definite meaning appropriate to use with reference to dollars and cents, and, except where a different meaning plainly appears, it is restricted in its application to money, and in sense it is lexically defined as meaning money, and this is said to be the sense in which the word is most commonly used."

40. Therefore, I find that the word "sum", in its natural meaning and as per its most common usage, would

38

mean money. The term "money" has also been used in subsection (7) of section 31 of the Act, 1996. Therefore, I would not hesitate in finding that the terms "sum" and "money" have been used by the legislature, in the given provision, interchangeably. In this light, it would be pertinent to take note of the given clause once again. The said clause states that interest may be awarded on the "sum" for which the arbitral award is made, or the same could be read as- interest may be awarded on the "money" for which the arbitral award is made. This "money" for which the award is made, necessarily would refer to the money as adjudicated by the arbitral tribunal, based on the claims of the parties, to be paid under the award. In other words, it would simply refer to the principal amount so awarded.

41. It would be necessary to understand the meaning of "interest" as used under the said clause as well. Again, in the absence of a definition under the Act,

1996, I would rely upon its meaning in common parlance.

For this, support of dictionaries can be taken.

42. Wharton's Law Lexicon, Fourteenth Edition, defines "interest" as follows:

"Interest. 1. Money paid at a fixed rate per cent for the loan or use of some other sum, called the principal."

Black's Law Dictionary, Seventh Edition, 1999, defines

"interest" as:

"interest. 1. Advantage or profit, esp. of a financial nature."

Webster's Third New International Dictionary, Volume

III defines "interest" to mean, inter alia, the following:

"interest. The price paid for borrowing money generally expressed as a percentage of the amount borrowed paid in one year."

Corpus Juris Secundum, Volume XLVII, explains the word

"interest" as follows:

"Interest is the compensation allowed by law, or fixed by the parties, for the use or forbearance of money, or as damages for its detention."

Stroud's Judicial Dictionary, Seventh Edition, 2008,

Volume 2, p. 1385, defines the term "interest" as follows:

"Interest is compensation paid by the borrower to the lender for deprivation of the use of his money."

43. Therefore, in light of the above, "interest" would be the return or compensation for the use or retention by one person of a sum of money belonging to or owed to another. It may be understood to mean the amount which one has contracted to pay for the use of borrowed money. It is a consideration paid either for the use of money or for forbearance in demanding it, after it has fallen due, and thus, it could be said to be a charge for

the use or forbearance of a particular amount of money.

In this sense, it is a compensation allowed in law for use of money belonging to another or for the delay in

41

paying the said money after it has become payable. This principle has also been noticed in the Central Bank case (supra).

44. It may be pertinent to take note of the approach of English Courts to interpret the term "interest". In *Westminster Bank Ltd v. Riches*, [1947] A.C. 390, the House of Lords elaborated upon the term "interest" for payment of moneys. Lord Wright observed that:

"The essence of interest is that it is a payment which becomes due because the creditor has not had his money at the due date. It may be regarded either as representing the profit he might have made if he had had the use of the money, or conversely the loss he suffered because he had not that use. The general idea is that he is entitled to compensation for the deprivation. From that point of view it would seem immaterial whether the money was due to him under a contract express or implied or a statute or whether the money was due for any other reason in law."

42

45. In the case of *Nicholas Pike v. The Commissioners for Her Majesty's Revenue and Customs*, [2013] UKUT 0225 (TCC), the House of Lords observed as follows:

"15. First, interest is calculated by reference to an underlying debt. As Megarry J put it in *Euro Hotel* (supra) at p 1084 b-f:--

"It seems to me that running through the cases there is the concept that as a general rule two requirements must be satisfied for payment to amount to interest, and a fortiori to amount to "interest of money". First, there must be a sum of money by reference to which the payment which is said to be interest is to be ascertained. ... Second, those sums of money must be sums that are due to the person entitled to the alleged interest ... I do not, of course, say that in every case these two requirements are exhaustive, or that they are inescapable. Thus I do not see why

payments should not be "interest of
money" if A lends money to B and
stipulates that the interest should be

43

paid not to him but to X: yet for the
ordinary case I think they suffice".

...

20. Sixth, the mere fact that the payment by way
of interest may be aggregated with a payment of a
different nature does not "denature" the payment
that is interest. This point was made in *Chevron
Petroleum UK Ltd v. BP Petroleum Development Ltd*
[1981] STC 689 at p 694 g-j where Megarry VC is
reported as saying:--

"If in its nature a sum is "interest of
money" I think it retains that nature
even if the parties to a contract
provide for it to be wrapped up with
some other sum and the whole paid in the
form of single indivisible sum. The
wrappings may conceal the nature of the
contents, but they do not alter them ...
If the true nature of a sum of money is
that it is "interest of money" that sum
will not be denatured, or transmuted
into something different, simply by
being incorporated into some larger sum

44

before being made payable under the
terms of the contract".

..."

46. It may be inferred from the aforesaid decisions,
that for an amount to be referred as "interest", it must,
prima facie, fulfill two conditions-

(1) There must be a sum of money by reference to which
the payment of interest may be ascertained.

(2) The sum of money must, generally, be due to the
person entitled to the interest.

Furthermore, it would be gainsaid in stating that the
mere fact that a payment of interest may be aggregated

with a payment of a different nature, the said
aggregation would not alter the distinct nature of
interest from the money on which it is levied.

47. Further, this Court in the case of Bhai Jaspal Singh v. CCT, (2011) 1 SCC 39, observed that:

45

"36. Interest is compensatory in character and is imposed on an assessee who has withheld payment of any tax as and when it is due and payable. The interest is levied on the actual amount of tax withheld and the extent of delay in paying the tax on the due date. Essentially, it is compensatory and different from penalty which is penal in character [see Pratibha Processors v. Union of India, (1996) 11 SCC 101]."

48. Therefore, it may be concluded that the term "interest", appears to be distinct from the principal amount on which it is imposed. Furthermore, the imposition of an interest is stated to be for the purpose of providing compensation for withholding the said principal amount or, as in the case of clause (a) of sub-section (7) of Section 31 of the Act, 1996, for withholding the money awarded as per the claim, as determined by the arbitral tribunal, from the date the cause of action arose till the date when such award was made. In other words, interest is imposed to compensate for the denial to one party, by the other party, of the money which rightfully belongs to the said former party

46

under the relevant agreement governing the arbitration proceedings.

49. Having clarified sub-section (a) of sub-section (7) of section 31 of the Act, 1996, I would now consider clause (b) of the said provision. As noticed above, clause (b) is applicable for the period from the date of award to the date of payment. The applicability of clause (b) has also been qualified by the legislature. The said clause uses the phrase "unless the award otherwise directs", which would mean that in the event the arbitral tribunal, in its award, makes a provision for interest to

be imposed in this second stage as envisaged by sub-section (7) of section 31 of the Act, 1996, clause (b) would become inapplicable. By the said award, the arbitral tribunal has the power to impose an interest for the post-award period which may be higher or lower than the rate as prescribed under clause (b). Even if the award states that no interest shall be imposed in the post-award period, clause (b) cannot be invoked.

47

50. If the arbitral award is silent on the question of whether there would be any post-award interest, only in that situation could clause (b) be made applicable. In the said situation, it would be mandatory as per law that the award would carry interest at the rate of 18% per annum from the date of the award to the date of payment. The term used in the given clause is "shall", therefore, if applicable, the imposition of interest as per clause (b) would be mandatory.

51. It would be relevant also to take note of the case of H.P. Housing & Urban Development Authority v. Ranjit Singh Rana, (2012) 4 SCC 505. In the Ranjit Singh Rana case (supra), this Court dealt with the meaning of the word "payment" as under clause (b) of sub-section (7) of section 31 of the Act, 1996 to ascertain when the liability to pay post-award interest would come to an end. After making a reference to the S.L. Arora case (supra), this Court went into the dictionary meaning of the word "payment". The Court explained as follows:

48

"15. The word "payment" may have different meaning in different context but in the context of Section 37(1)(b); it means extinguishment of the liability arising under the award. It signifies satisfaction of the award. The deposit of the award amount into the court is nothing but a payment to the credit of the decree-holder. In this view, once the award amount was deposited by the appellants before

the High Court on 24-5-2001, the liability of post-award interest from 24-5-2001 ceased. The High Court, thus, was not right in directing the appellants to pay the interest @ 18% p.a. beyond 24-5-2001."

52. Clause (b) of sub-section (7) of section 31 of the Act, 1996 further states that the interest as envisaged under the said provision would be on the sum directed to be paid by an arbitral award. As noticed in the discussion hereinabove, the term "sum", as in clause (a), refers simply to the money directed to be paid as per the award, that is, the money as adjudicated by the arbitral tribunal.

49

53. It is a settled principle of law that if the same word is used more than once in the same provision of a statute, the intention of the legislature must be to give the same meaning to the word at each place where it is repeated. There would be a presumption that the said word is used in the same sense throughout the given provision. According to Bennion on Statutory Interpretation, Fifth Edition, 2008, p. 1160:

"Same words to be given same meaning. It is presumed that a word or phrase is not to be taken as having different meanings within the same instrument, unless this fact is made clear. Where therefore the context makes it clear that the term has a particular meaning in one place, it will be taken to have that meaning elsewhere."

54. In support of this principle, I refer to the Central Bank case (supra), wherein a Constitution Bench of this Court observed as follows:

"42. ... Ordinarily, a word or expression used at several places in one enactment should be

50

assigned the same meaning so as to avoid "a head-on clash" between two meanings assigned to the same word or expression occurring at two places in the same enactment. It should not be lightly assumed that "Parliament had given with one hand what it took away with the other" (see Principles of Statutory Interpretation, Justice

G.P. Singh, 7th Edn. 1999, p. 113). That construction is to be rejected which will introduce uncertainty, friction or confusion into the working of the system (ibid, p. 119). While embarking upon interpretation of words and expressions used in a statute it is possible to find a situation when the same word or expression may have somewhat different meaning at different places depending on the subject or context. This is however an exception which can be resorted to only in the event of repugnancy in the subject or context being spelled out. It has been the consistent view of the Supreme Court that when the legislature used same word or expression in different parts of the same section or statute, there is a presumption that the word is used in the same sense throughout (ibid, p. 263). More correct statement of the rule is, as held by the House of Lords in *Farrell v. Alexander* All ER at p. 736b, "where

51

the draftsman uses the same word or phrase in similar contexts, he must be presumed to intend it in each place to bear the same meaning". The court having accepted invitation to embark upon interpretative expedition shall identify on its radar the contextual use of the word or expression and then determine its direction of avoiding collision with icebergs of inconsistency and repugnancy."

55. It can be concluded that it is a sound rule of construction whereby the same word appearing in the same section of the same statute must be given the same meaning, unless there is anything to indicate the contrary. The only exception to this rule of construction, whereby the said principle may be rebutted, is by making reference to the context in which the words are used. The word may be understood in a different sense, if the context so requires that to be done. The context herein, that is, under clause (a) and under clause (b) of sub-section (7) of section 31 of the Act, 1996, does not appear to be divergent from one another.

52

The word "sum" has been used in both clauses in the context of what is to be paid as per the arbitral award.

56. Before I conclude, it would be profitable to take note of the Central Bank of India case (supra) with

regard to the limited issue of imposition of compound interest. While describing the role of the legislature to relieve burdened debtors from being charged with oppressive compound interest rates, this Court in the Central Bank of India case (supra), stated that the practice of imposing such interest was permissible, legal and judicially correct, if it was a consequence of a voluntary agreement between the parties, except when the same was superseded by legislation. Furthermore, this Court observed that the interest would be included as part of the principal amount only once it is capitalised. This Court, in the Central Bank of India case (supra), observed as follows:

"36. ...There is nothing wrong in the parties voluntarily entering into transaction, evidenced by deeds incorporating covenant or stipulation

53

for payment of compound interest at reasonable rates, and authorising the creditor to capitalise the interest on remaining unpaid so as to enable interest being charged at the agreed rate on the interest component of the capitalised sum for the succeeding period. Interest once capitalised, sheds its colour of being interest and becomes a part of principal so as to bind the debtor/borrower."

57. To support the above principle, whereby it is stated that compound interest is permissible only as a consequence of an explicit statutory provision, I take note of the case of Union of India v. Tata Chemicals Ltd., (2014) 6 SCC 335 wherein this Court observed as follows:

"38. Providing for payment of interest in case of refund of amounts paid as tax or deemed tax or advance tax is a method now statutorily adopted by fiscal legislation to ensure that the aforesaid amount of tax which has been duly paid in prescribed time and provisions in that behalf form part of the recovery machinery provided in a taxing statute. Refund due and payable to the

54

assessee is debt-owed and payable by the Revenue. The Government, there-being no express statutory provision for payment of interest on the refund of excess amount/tax collected by the Revenue, cannot shrug off its apparent obligation to

reimburse the deductors lawful monies with the accrued interest for the period of undue retention of such monies. ..."

58. I may also take note of the decision in Parkside Leasing Ltd v. Smith (Inspector of Taxes) [1985] 1 WLR 310, wherein the Chancery Division, while discussing the difference between the receipt of proceeds by cash or by cheque, was of the view that it would be the actual "receipt" of the proceeds, in either case, that places such proceeds at the disposal of the payee. The said decision relied upon D&C Builders Ltd. v. Rees [1966] 2 Q.B. 617, wherein Lord Denning observed that: "...The cheque, when given, is conditional payment. When honoured, it is actual payment. ..."

55

In other words, the Parkside Leasing Ltd. case (supra) was of the view that money would be "paid" only when the recipient would have the option to utilise the said money and exercise willful discretion.

59. For the purposes of the Act, 1996, interest could be included within the principal amount only when the said aggregate amount is paid to the party in whose favour the arbitral award was passed. In other words, once the interest amount is within the physical and actual possession of the party so entitled to it, only then could the interest amount be said to have merged with the principal amount. Therefore, in the present scenario, the appellants would not be entitled to claim post-award interest on the aggregate of the principal amount and interest pendente lite, since the said aggregate sum was not in the actual physical possession of the appellants herein. Further, I take note that subsection (7) of section 31 of the Act, 1996, neither makes

reference to compounding of interest, nor to awarding interest on interest.

60. Therefore, in my considered view, the term "sum" as used in clause (b) of sub-section (7) of section 31 of the Act, 1996 would have the same meaning as assigned to the word under clause (a) of the same provision. It would refer to the money as adjudicated by the arbitral tribunal based on the claim of the parties to the arbitral proceedings. It has already been noticed that this money would be distinct from the interest as may have been awarded by the arbitral tribunal under clause (a) of sub-section (7) of section 31 of the Act, 1996. Therefore, the interest under clause (b) would be imposed on money awarded by the arbitral tribunal on the basis of the claims of the parties, and the said money cannot merge within it any interest as imposed in the period from the date of cause of action to the date of the award.

61. In light of the above discussion, the reference is answered in the following terms-

I find no infirmity with the S.L. Arora case (supra), whereby it was held that if the arbitral award is silent about interest from the date of award till the date of payment, the person in whose favour the award is made will be entitled to interest at 18% per annum on the principal amount awarded, from the date of award till the date of payment.

62. In view of the above, while answering the referral order, Civil Appeal No. 3148 of 2012, along with all connected matters, is remanded back to an appropriate two-Judge Bench of this Court for adjudication.

NEW DELHI,
NOVEMBER 25, 2014.

58

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No. 3148 OF 2012

M/S. HYDER CONSULTING (UK) LTD.

.... APPELLANT

VERSUS

GOVERNOR STATE OF ORISSA TH. CHIEF ENG. .. RESPONDENT

WITH

SLP (C) No. 19895/2008

SLP (C) No. 20282/2008

CIVIL APPEAL No. 3149 OF 2012

CIVIL APPEAL No. 3147 OF 2012

SLP (C) No. 18614/2012

CIVIL APPEAL No. 1390 OF 2013

SLP (C) No. 21896/2010

JUDGMENT

S. A. BOBDE, J.

1. I have had the advantage of reading the Judgment of my Lord, the Chief Justice. I entirely agree that the

59

findings of this Court in State of Haryana and Others v. S.L.

Arora and Company, (2010) 3 SCC 690 that Uttar Pradesh

Cooperative Federation Limited v. Three Circles, (2009) 10

SCC 374 was incorrectly founded upon the decision in

McDermott International INC v. Burn Standard Co. Ltd.,

(2006) 11 SCC 181 and that such reliance was not in

consonance with the doctrine of precedent. The McDermott

case is not an authority on the question whether the

Arbitrator may award compound interest nor does that

decision sanction post-award interest be imposed on the aggregate sum and interest pendent lite. The Arbitral Tribunal's authority to award "interest on interest" was not discussed therein. This Court, therefore, while deciding State of Haryana and Others v. S.L. Arora and Company, (2010) 3 SCC 690, rightly refused to treat the McDermott case as well as the Three Circles case as authorities for awarding "interest on interest" and held that both were wrongly decided. Further, the decisions in ONGC v. M.C. Clelland Engineers S.A., (1999) 4 SCC 327 as well as the Three Circles case pertain to an Award under the Arbitration

60

Act, 1940, which did not contain a specific provision dealing with the arbitrator's power to grant interest. Likewise, the Central Bank of India v. Ravindra and Others, (2002) 1 SCC 367 case arose under Section 34 of the Code of Civil Procedure, 1908 (hereinafter referred to as "the CPC"), and cannot be treated as an authority for award of interest under clause (7) of Section 31 of the Arbitration Act, 1996 (hereinafter referred to as "the Act").

2. It is not possible to agree with the conclusion in S.L. Arora's case that Section 31(7) of the Act does not require that interest, which accrues till the date of the Award, be included in the "sum" from the date of Award for calculating the post-award interest. In my humble view, this conclusion does not seem to be in consonance with the clear language of Section 31(7) of the Act.

3. Sub-section (7) of Section 31 of the Act, which deals with the power of the Arbitral Tribunal to award interest, reads as follows:

"Sub-section (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 eighteen per centum per annum from the date of the award to the date of payment."

4. Clause (a) of sub-section (7) provides that where an Award is made for the payment of money, the Arbitral Tribunal may include interest in the sum for which the Award is made. In plain terms, this provision confers a power upon the Arbitral Tribunal while making an Award for payment of money, to include interest in the sum for which the Award is made on either the whole or any part of the money and for the whole or any part of the period for the entire pre-award period between the date on which the cause of action arose and the date on which the Award is

made. To put it differently, sub-section (7)(a) contemplates that an Award, inclusive of interest for the pre-award period on the entire amount directed to be paid or part thereof, may be passed. The "sum" awarded may be principal amount and such interest as the Arbitral Tribunal deems fit. If no interest is awarded, the "sum" comprises only the principal. The significant words occurring in clause (a) of sub-section (7) of Section 31 of the Act are "the sum for which the award is made." On a plain reading, this expression refers to the total amount or sum for the payment for which the Award is made. Parliament has not added a qualification like "principal" to the word "sum," and therefore, the word "sum" here simply means "a particular

amount of money." In Section 31 (7), this particular amount of money may include interest from the date of cause of action to the date of the award.

5. The Oxford Dictionary gives the following meaning to the word "sum":

Sum, 'if noun':- A particular amount of money.

63

Sum, 'if verb':- The total amount resulting from the addition of two or more numbers, amounts, or items.

6. In Black's Law Dictionary, the word "sum" is given the following meaning:-

"SUM. In English law- A summary or abstract; a compendium; a collection. Several of the old law treatises are called "sum." Lord Hale applies the term to summaries of statute law. Burrill. The sense in which the term is most commonly used is "money"; a quantity of money or currency; any amount indefinitely, a sum of money, a small sum, or a large sum. U.S. v. Van Auken, 96 U.S. 368, 24 L.Ed. 852; Donovan v. Jenkins, 52 Mont. 124, 155 P. 972, 973."

7. Thus, when used as a noun, as it seems to have been used in this provision, the word "sum" simply means "an amount of money"; whatever it may include - "principal" and "interest" or one of the two. Once the meaning of the word "sum" is clear, the same meaning must be ascribed to the word in clause (b) of sub-section (7) of Section 31 of

64

the Act, where it provides that a sum directed to be paid by an Arbitral Award "shall carry interest" from the date of the Award to the date of the payment i.e. post-award. In

other words, what clause (b) of sub-section (7) of Section 31 of the Act directs is that the "sum," which is directed to be paid by the Award, whether inclusive or exclusive of interest, shall carry interest at the rate of eighteen per cent per annum for the post-award period, unless otherwise ordered.

8. Thus, sub-section (7) of Section 31 of the Act provides, firstly, vide clause (a) that the Arbitral Tribunal may include interest while making an award for payment of money in the sum for which the Award is made and further, vide clause (b) that the sum so directed to be made by the Award shall carry interest at a certain rate for the post award period.

9. The purpose of enacting this provision is clear, namely, viz. to encourage early payment of the awarded sum and to discourage the usual delay, which accompanies

65

the execution of the Award in the same manner as if it were a decree of the court vide Section 36 of the Act.

10. In this view of the matter, it is clear that the interest, the sum directed to be paid by the Arbitral Award under clause (b) of sub-section (7) of Section 31 of the Act is inclusive of interest pendent lite.

11. At this juncture, it may be useful to refer to Section 34 of the CPC, also enacted by Parliament and conferring the same power upon a court to award interest on an award i.e. post-award interest. While enacting Section 34, CPC, Parliament conferred power on a court to order interest "on the principal sum adjudged" and not on merely the "sum" as provided in the Arbitration Act. The departure from the language of Section 34 CPC in Section 31 (7) of the Act,

1996 is significant and shows the intention of Parliament.

12. It is settled law that where different language is used by Parliament, it is intended to have a different effect. In the Arbitration Act, the word "sum" has deliberately not been qualified by using the word "principal" before it. If it

66

had been so used, there would have been no scope for the contention that the word "sum" may include "interest." In Section 31(7) of the Act, Parliament has deliberately used the word "sum" to refer to the aggregate of the amounts that may be directed to be paid by the Arbitral Tribunal and not merely the "principal" sum without interest.

13. Thus, it is apparent that vide clause (a) of sub-section (7) of Section 31 of the Act, Parliament intended that an award for payment of money may be inclusive of interest, and the "sum" of the principal amount plus interest may be directed to be paid by the Arbitral Tribunal for the pre-award period. Thereupon, the Arbitral Tribunal may direct interest to be paid on such "sum" for the post-award period vide clause (b) of sub-section (7) of Section 31 of the Act, at which stage the amount would be the sum arrived at after the merging of interest with the principal; the two components having lost their separate identities.

14. In fact this is a case where the language of sub-section 7 clause (a) and (b) is so plain and unambiguous that no question of construction of a statutory provision arises. The

67

language itself provides that in the sum for which an award is made, interest may be included for the pre-award period and that for the post-award period interest up to the rate of eighteen per cent per annum may be awarded on such sum

directed to be paid by the Arbitral Award.

In such a situation one is reminded of the decision in Ganga Prasad Verma (Dr.) v. State of Bihar, 1995 Supp (1) SCC 192 Para 5, where this Court held that, "Where the language of the Act is clear and explicit, the court must give effect to it, whatever may be the consequences, for in that case the words of the statute speak the intention of the Legislature." Similarly, in Keshavji Ravji & Co. v. CIT, (1990) 2 SCC 231, a three-Judge Bench of this Court explained the rule of literal interpretation as under (SCC p.242, Para 11): "If the intendment is not in the words used it is nowhere else. The need for interpretation arises when the words used in the statute are, on their terms, ambivalent and do not manifest the intention of the legislature."

68

We may also refer to the decision of the Privy Council in Pakala Narayana Swami v. Emperor, AIR 1939 PC 47, wherein Lord Atkin observed that, "when the meaning of words is plain, it is not the duty of courts to busy themselves with supposed intentions." This view was upheld recently by this Court in T.N. State Electricity Board v. Central Electricity Regulatory Commission, (2007) 7 SCC 636.

In fact the settled view on this subject has been to admit results of construction even if they be strange or surprising¹, unreasonable or unjust or oppressive². The Privy Council in Emperor v. Benoarilal Sarma, AIR 1945 PC 48 (p. 53), emphasised, "Again and again, this Board has insisted that in construing enacted words we are not concerned with the policy involved or with the results, injurious or otherwise which may follow from giving effect to the language used."

London Brick Company Ltd. v. Robinson, [1943] 1 ALL ER 23, p. 26 (HL).
 2 IRC v. Hinchy, [1960] 1 ALL ER 505, pp. 508, 512 (HL).

69

In the case of Nasiruddin v. Sita Ram Agarwal, (2003) 2
 SCC 577 (Para 37), a three-Judge Bench of this Court,
 made it clear that the Court's jurisdiction cannot be invoked
 to interpret a statute so as to add or subtract words or read
 something into a provision which is not there.

Infact, Maxwell on the Interpretation of Statutes, states,
 "where the language is plain and admits of but one
 meaning, the task of interpretation can hardly be said to
 arise. "The decision in this case," said Lord Morris of
 Borth-y-Gest in a revenue case, "calls for a full and fair
 application of particular statutory language to particular
 facts as found. The desirability or the undesirability of one
 conclusion as compared with another cannot furnish a
 guide in reaching a decision." 3

Where, by the use of clear
 and unequivocal language capable of only one meaning,
 anything is enacted by the legislature, it must be enforced
 however harsh or absurd or contrary to common sense

3 Shop and Store Developments Ltd. v. I.R.C. [1967] 1 A.C. 472, per Lord Morris of
 Borth-y-Gest at p. 493. But see I.R.C. v. Bates [1965] 1 W.L.R. 1133, per Lord Denning
 M.R., affirmed in H.L. at [1967] 2 W.L.R. 60 sub. Nom. Bates v. I.R.C.; Luke v. I.R.C.
 [1963] A.C. 557, per Lord Reid.

70

the result may be. 4
 The interpretation of a statute is not
 to be collected from any notions which may be entertained
 by the court as to what is just and expedient: 5 words are
 not to be construed, contrary to their meaning, as

embracing or excluding cases merely because no good reason appears why they should not be embraced or excluded.⁶

Tindal, C.J. in the *Sussex Peerage*⁷ case, summarised this principle as follows: "If the words of the Statute are in themselves precise and unambiguous then no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves do alone in such cases best declare the intent of the law giver." This cardinal principle of construction was first stated by the United States Supreme Court in its landmark decision of *Caminetti v. United States*, 242 U.S. 470, 485 (1917), whereby Justice Day observed, "where the language is plain and

⁴ *Cartledge v. E. Jopling & Sons, Ltd.* [1963] A.C. 758. Cf. *Miller v. Salomons* [1853] 7 Ex. 475, per Pollock C.B.; *Re British Farmers', etc., Co.* (1878) 48 L.J.Ch. 56, per Jessel M.R.; *Magor and St. Mellons R.D.C. v. Newport Corporation* [1952] A.C. 189.

⁵ *Gwynne v. Burnell* (1840) 7 Cl. & F. 572 per Coleridge J.

⁶ *Whitehead v. James Stott Ltd.* [1949] 1 K.B. 358; *Galashiels Gas Co., Ltd. v. O'Donell* [1949] A.C. 275.

⁷ [1844] 11 Cl & F 85, p. 143.

admits of no more than one meaning the duty of interpretation does not arise."

15. In the result, I am of the view that S.L. Arora's case is wrongly decided in that it holds that a sum directed to be paid by an Arbitral Tribunal and the reference to the Award on the substantive claim does not refer to interest pendente lite awarded on the "sum directed to be paid upon Award" and that in the absence of any provision of interest upon interest in the contract, the Arbitral Tribunal does not have the power to award interest upon interest, or compound interest either for the pre-award period or for the post-award period. Parliament has the undoubted power to legislate on the subject and provide that the Arbitral Tribunal may award interest on the sum directed to be paid

by the Award, meaning a sum inclusive of principal sum adjudged and the interest, and this has been done by Parliament in plain language.

.....J.
[S.A. BOBDE]

72

NEW DELHI,
NOVEMBER 25th, 2014

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.3148 OF 2012

M/s Hyder Consulting (UK) Ltd.

Appellant(s)

VERSUS

Governor State of Orissa
through Chief Engineer

Respondent(s)

WITH

Special Leave Petition (C) No.19895 of 2008
Special Leave Petition (C) No.20282 of 2008
Civil Appeal No.3149 of 2012
Civil Appeal No.3147 of 2012
Special Leave Petition (C) No.18614 of 2012
Civil Appeal No.1390 of 2013
Special Leave Petition (C) No.21896 of 2010

73

JUDGMENT

Abhay Manohar Sapre, J.

1. I have had the benefit of reading the scholarly Judgments of My Lord the Chief Justice as also my learned brother Bobde J.

2. With great respect, I find myself in complete agreement with the reasoning and the eventual

conclusion arrived at by brother Bobde J. Even though, the judgment delivered by brother Bobde J. encapsulates everything of what is required to be said, I, however, looking to the point involved and very ably argued by all learned senior counsel, wish to record my own reasons, in addition to what has already been laid down.

3. Reiteration of facts is unnecessary. The only question that arises for determination in the instant lis is, "Whether grant of interest by the Arbitral Tribunal

74

under Section 31(7) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act') amounts to granting "interest on interest"?

4. The aforesaid question can be answered by a plain and simple reading of Section 31(7) of the Act which reads as under:

"31(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 eighteen per centum per annum from the date of the award to the date of payment."

5. Section 31(7)(a) of the Act deals with grant of pre-award interest while sub-clause (b) of Section 31(7) of the Act deals with grant of post-award interest. Pre-award interest is to ensure that arbitral proceedings

75

are concluded without unnecessary delay. Longer the proceedings, would be the period attracting interest.

Similarly, post-award interest is to ensure speedy payment in compliance of the award. Pre-award interest is at the discretion of Arbitral Tribunal, while the post-award interest on the awarded sum is mandate of statute - the only difference being that of rate of interest to be awarded by the Arbitral Tribunal. In other words, if the Arbitral Tribunal has awarded post-award interest payable from the date of award to the date of payment at a particular rate in its discretion then it will prevail else the party will be entitled to claim post-award interest on the awarded sum at the statutory rate specified in clause (b) of Section 31(7) of the Act, i.e., 18%. Thus, there is a clear distinction in time period and the intended purpose of grant of interest.

6. Section 31(7)(a) employs the words "...the arbitral tribunal may include in the sum for which the award is

76

made interest...". The words "include in the sum" are of utmost importance. This would mean that pre-award interest is not independent of the "sum" awarded. If in case, the Arbitral Tribunal decides to award interest at the time of making the award, the interest component will not be awarded separately but it shall become part and parcel of the award. An award is thus made in respect of a "sum" which includes within the "sum" component of interest, if awarded.

7. Therefore, for the purposes of an award, there is no distinction between a "sum" with interest, and a "sum" without interest. Once the interest is "included in the sum" for which the award is made, the original sum and the interest component cannot be segregated and be seen independent of each other. The interest component then

loses its character of an "interest" and takes the colour of "sum" for which the award is made.

77

8. There may arise a situation where, the Arbitral Tribunal may not award any amount towards principal claim but award only "interest". This award of interest would itself then become the "sum" for which an award is made under Section 31(7)(a) of the Act. Thus, in a pre-award stage, the legislation seeks to make no distinction between the sum award and the interest component in it.

9. Therefore, I am inclined to hold that the amount award under Section 31(7)(a) of the Act, whether with interest or without interest, constitutes a "sum" for which the award is made.

10. Coming now to the post-award interest, Section 31(7)(b) of the Act employs the words, "A sum directed to

78

be paid by an arbitral award...". Sub-clause (b) uses the words "arbitral award" and not the "arbitral tribunal". The arbitral award, as held above, is made in respect of a "sum" which includes the interest. It is, therefore, obvious that what carries under Section 31(7)(b) of the Act is the "sum directed to be paid by an arbitral award" and not any other amount much less by or under the name "interest". In such situation, it cannot be said that what is being granted under Section 31(7)(b) of the Act is "interest on interest". Interest under sub-clause (b) is granted on the "sum" directed to be paid by an arbitral award wherein the "sum" is nothing more than

what is arrived at under sub-clause (a).

11. Therefore, in my view, the expression "grant of interest on interest" while exercising the power under Section 31(7) of the Act does not arise and, therefore, the Arbitral Tribunal is well empowered to grant interest even

79

in the absence of clause in the contract for grant of interest.

12. My aforesaid interpretation of Section 31 (7) of the Act is based on three golden rules of interpretation as explained by Justice G.P. Singh - Interpretation of Statute (13th Edition- 2012) where the learned author has said that while interpreting any Statute, language of the provision should be read as it is and the intention of the legislature should be gathered primarily from the language used in the provision meaning thereby that attention should be paid to what has been said as also to what has not been said; second, in selecting out of different interpretations "the Court will adopt that which is just, reasonable, and sensible rather than that which is none of those things" ; and third, when the words of the Statute are clear, plain or unambiguous, i.e., they are reasonably susceptible to only one meaning , the Courts

80

are bound to give effect to that meaning irrespective of the consequence (see pages 50, 64, and 132). I have kept these principles in mind while interpreting Section 31(7) of the Act.

.....J.

[ABHAY MANOHAR SAPRE]

New Delhi;
November 25, 2014.

81

82
ITEM NO.1A COURT NO.1 SECTION XIA

(For Judgment)

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No. 3148/2012

M/S HYDER CONSULTING(UK) LTD. Appellant(s)

VERSUS

GOVERNOR STATE OF ORISSA TR.CHIEF ENG. Respondent(s)

(With office report)

WITH

SLP(C) No. 19895 of 2008

SLP(C) No. 20282 of 2008

C.A. No. 3149 of 2012

C.A. No. 3147 of 2012

SLP(C) No. 18614 of 2012

C.A. No. 1390/2013

83

8

SLP(C) No. 21896 of 2010

Date : 25/11/2014 These appeals/ SLPS were called on for
pronouncement of judgment today.

For Appellant(s) M/s Suresh A. Shroff & Co.,Adv.
M/s. Karanjawala & Co.,Adv.

For Respondent(s) Mr. Nidesh Gupta, Sr. Adv.
Mr. Tarun Gupta, Adv.
Mrs. Kirti Renu Mishra,Adv.
Mr. Ashok Mathur,Adv.
Mr. Jagjit Singh Chhabra, Adv.

Hon'ble the Chief Justice pronounced His Lordship's judgment declaring that there is no infirmity in the case of State of Haryana and Ors. vs. S.L. Arora and Company (2010) 3 SCC 690 and the same was correctly decided. While answering the referral order, His Lordship remanded the matters to an appropriate two-Judge Bench of this Court for adjudication.

Hon'ble Mr. Justice S.A. Bobde, pronounced His Lordship's separate judgment and held that S.L. Arora case (supra) laid down the incorrect position of law and was wrongly decided.

84

8

Hon'ble Mr. Justice Abhay Manohar Sapre, also pronounced His Lordship's separate judgment concurring with the reasoning given by Hon'ble Mr. Justice S.A. Bobde that the S.L. Arora case (supra) was wrongly decided.

[Charanjeet Kaur]

[Vinod Kulvi]

Court Master

Asstt. Registrar

[Three Signed reportable judgments are placed on the file]

85

8