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Supreme Court: Arbitrator has the discretion to choose to grant post-award interest only on the principal amount under Section 31(7)(b) of the Arbitration Act.

In a recent decision, the Supreme Court in the case of *Morgan Securities & Credits (P) Ltd. v. Videocon Industries Ltd.*¹, has held that under Section 31(7)(b) of the Arbitration & Conciliation Act, 1996 (“**Arbitration Act**”), the arbitral tribunal has the discretion to choose to grant post-award only on the principal sum, and not necessarily the aggregate sum of the principal sum and pre-award interest.

Brief Facts

The parties entered into an agreement, under which Videocon Industries Limited (“**Videocon**”) availed bill discounting facilities from Morgan Securities and Credits Private Limited (“**Morgan Securities**”) (“**Agreement**”). Morgan Securities disbursed amounts under the terms of the Agreement. When the dues remain unpaid, Morgan Securities issued a notice to Videocon for an amount of INR 5,00,32,656, (Indian Rupees five crores thirty two thousand six hundred fifty six) along with overdue interest. Morgan Securities invoked the arbitration clause of the Agreement.

Arbitral award: The Arbitral Tribunal decreed the claim to Morgan Securities for an amount of INR 5,00,32,656 (Indian Rupees five crores thirty two thousand six hundred fifty six), along with interest at (a) 21% from the date of default to the date of demand notice, (b) 36% pre-award interest from the date of demand notice to the date of award, and (c) 18% post-award interest only on the principal amount of INR 5,00,32,656 (Indian Rupees five crores thirty two thousand six hundred fifty six).

Appeal before the Single Judge²: Morgan Securities challenged the award under Section 34 of the Arbitration Act on the ground that the post-award interest of 18% should be granted on the total sum awarded, including both the principal and pre-award interest. The Ld. Single Judge dismissed Morgan Securities’ appeal holding that the arbitrator in his discretion restricted the post-award interest to the principal amount and the Court would not interfere with the exercise of discretion.

Appeal before Division Bench. Morgan Securities challenged the Ld. Single Judge’s order. The Division Bench as per the decision in *Hyder Consulting v. Governor, State of Orissa*³ held that when an arbitral award is silent on post-award interest, it would be payable on the ‘sum’ awarded, which would include both principal and the pre-award interest. However, in the present case, since the award is *not silent* on the post-award interest, the provisions of Section 31(7)(b) of the Arbitration Act would not be applicable.

¹ 2022 SCC OnLine SC 1127.

² Videocon also filed an appeal under Section 34 of the A&C Act, and the Ld. Single Judge dismissed this appeal along with the Morgan Securities appeal. Videocon did not challenge the Ld. Single Judge’s order before the Division Bench.

³ (2015) 2 SCC 189.

Special Leave Petition (“SLP”): Morgan Securities filed an SLP challenging the decision of the Division Bench. The Supreme Court issued notice confined to the issue of post-award interest in view of the arbitrator deciding the interest based on State of Haryana v. SL Arora⁴ notwithstanding that the decision in SL Arora (supra) was overruled in Hyder Consulting (supra).

Position of law

Section 31(7) of the Arbitration Act: Section 31 provides for the “form and content of the arbitral award”. Section 31(7) deals with pre-award and post-award interest. While Section 31(7)(a) provides for pre-award interest, Section 31(7)(b) provides for post-award and reads as under-

"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." (emphasis supplied)

Decision of SL Arora (supra): In 2010, the Supreme Court (two-judge Bench) held that Section 31(7) of the Arbitration Act does not enable the arbitral tribunal to provide interest on interest from the date of the award.

Decision of Hyder Consulting (supra): The correctness of SL Arora (supra) was referred to a 3 (three) judge bench⁵. By 3 (three) separate judgements, the Supreme Court (in 2:1 majority) overruled the decision of SL Arora (supra) to hold that ‘sum’ on which post-award interest is to be calculated includes pre-award interest as well as the principal amount.

Findings and Rationale

‘Sum’ in Section 37(7)(a) of the Arbitration Act: The Supreme Court upheld the decision(s) of the Single Judge and Division Bench’s decision to grant post-award interest on the ‘principal amount’. While dismissing the appeal, the Supreme Court clarified that in Hyder Consulting (supra), it was held that the arbitrator may grant post-award interest on the aggregate of the principal and the pre-award interest. However, it did not discuss the issue of whether the arbitrator could use its discretion to award post-award interest only on a part of the ‘sum’ awarded under Section 31(7)(a) of the Arbitration Act - in this case, a part of the sum being only the principal amount.

Section 31(7)(b) of the Arbitration Act: It was further held that Section 31(7)(b) of the Arbitration Act does not restrict the arbitrator’s discretion in granting post-award interest. The arbitrator has the discretion to award post-award interest on a part of the ‘sum’. It was further clarified that the words “unless the award otherwise directs” under Section 31(7)(b) of the Arbitration Act only qualifies the *rate* of interest, not additional components of interest (such as pre-award interest). Section 31(7)(b) of the Arbitration Act only provides that if the arbitrator does not grant post-award interest, then the award-holder is entitled to post-award interest at 18%, unless the award otherwise directs another rate of interest.

Accordingly, the arbitrator was well within its right to award post-award interest only on the principal amount.

JSA Comment

J. Chandrachud has stated in the judgement that the purpose of granting post-award interest was to ensure that the award-debtor does not delay the payment of the award. However, in reality, the award-debtors continue to delay payments under the award by initiating litigations in respect of the computation and components of post-award interest granted thereunder. Hence, the present judgement clarifies that the arbitrator has the discretion to awarding pre-award interest independently on a part of each of the various components of sum and reiterates the position on what constitutes the ‘sum’ under Section 37(1)(b) of the Arbitration Act.

⁴ (2010) 3 SCC 690.

⁵ Bench comprising of HL Dattu, CJI, Bobde, J. and Sapre, J.

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This Prism has been prepared by:



Dheeraj Nair
Partner



Vishrutvi Sahni
Senior Associate



Aishna Jain
Associate



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