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S No 3

THE JOURNAL OF CORPORATE PROFESSIONALS

VOLUME XXV No. 4 APRIL 1995

231932
Solar Cooper

Chartered Secretary

- Pp 279-364
- ◆ SEMINAR ON CREDIT RATING (THROUGH THE MEDIUM OF SINET) ■ 349
 - ◆ STANDARDISATION OF ADDITIONAL FEES UNDER SECTION 611(2) OF COMPANIES ACT ■ 323
 - ◆ AMENDMENT OF SCHEDULE XIV OF COMPANIES ACT ■ 324
 - ◆ COMPANIES (AMEND.) REGULATIONS, 1995 ■ 324
 - ◆ AMEND. OF RULE 19 OF SCR RULES ■ 325
 - ◆ AMENDMENT OF PACKAGED COMMODITIES RULES ■ 326
 - ◆ FILLS SPECIFIED UNDER SECTION 115AD OF I.T. ACT ■ 327
 - ◆ TAXATION OF OIL, MINING AND OTHER EXTRACTIVE INDUSTRIES ■ 287
—SUNIL CHOPRA
 - ◆ PREFERENTIAL ALLOTMENT OF SECURITIES IN INDIA: SOME ISSUES ■ 292
—DR. THIRIPAL RAJU AND MS. B. MANJULATHA
 - ◆ COMPUTER SOFTWARE PROGRAMMES AND COPYRIGHT ACT, 1957: AN OVERVIEW ■ 298
—SATISH MENON
 - ◆ ARBITRATOR AND LAW RELATING TO INTEREST ■ 301
—A.K. BANSAL

4



THE INSTITUTE OF COMPANY SECRETARIES OF INDIA

Arbitrator and Law Relating to Interest

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In most of the claims before the arbitrators the claim for interest is of substantial amount and some times it is even higher than the principal. The law relating to the grant of interest by the arbitrator has undergone repeated changes, modifications and has been a subject of contradictory interpretations by various

Indian courts.

There was no stability in the law and it had far reaching effects. In most of the awards, the portion of the award relating to grant of interest was either deleted or modified by the

courts and it was a subject of further litigation in the higher courts. There were confusing interpretations and judgments of the courts and it was a Pandora's box of litigation. The law of interest as well as concept of interest has changed in the modern times. The rate of interest also varies from time to time. There are different laws of interest for different periods and hence the point of time has great relevance, in the law relating to interest. Even the Supreme Court has recently over-ruled its previous decision by a larger Bench decision, in *G.C. Roy's* case. Now the law relating to interest has been interpreted by the Supreme Court conclusively and even the Law Commission of India is considering to incorporate an express provision in the Arbitration Act by amending the same.

The word 'interest' has been defined in Oxford Advanced Learner's Dictionary of Current English as "money charged and paid for use of money". The jurisdiction to grant interest depends upon the period in question. Mainly there are four periods in arbitration disputes discussed as under:

1. FROM THE DATE OF CAUSE OF ACTION TILL THE DATE OF REFERENCE OF DISPUTES TO ARBITRATION

For this period there are two relevant legislations i.e., Interest Act, 1839 and Interest Act, 1978. Interest Act, 1978, came into force on 19.8.1981; hence the arbitration awards which were passed prior to 19.8.1981 are governed by Interest Act, 1839, and the arbitration awards which were passed on or after 19.8.1981 are governed by Interest Act, 1978.

(a) Awards prior to 19.8.1981

Interest Act, 1839, did not empower the arbitrator to grant interest. Hence, the arbitrator had no jurisdiction to grant interest under the said Act. The Law Commission in its 63rd report had recommended the revision of the Interest Act, 1839, which contained only one section and every phrase used in the Act had given rise to problems of interpretation and judicial decisions had disclosed divergence of views in respect of the same. Hence, new Interest Act was enacted in 1978 and Interest Act of 1839 was repealed. The date of commencement

of Interest Act, 1978 i.e., 19.8.1981 is very important and relevant in the law of interest.

The Supreme Court of India, in case of *Executive Engineer, Irrigation, Galimala and others v. Abnadutta Jena* (Arbitration

Law Report. 1988, Volume 9, page 356)

had considered the question of award of interest for this period and for post reference till award period and has held in para 6 as under:

".....In the cases which arose

prior to the commencement of the 1978 Act the arbitrator has no such power under the Interest Act, 1839. It is therefore, necessary, as we said, to look elsewhere for the power of the arbitrator to award interest up to the date of institution of the proceedings. Since the arbitrator is required to conduct himself and make the award in accordance with law we must look to the substantive law for the power of the arbitrator to award interest before the commencement of the proceedings. If the agreement between the parties entitles the arbitrator to award interest no further question arises and the arbitrator may award interest. Similarly, if there is a usage of trade having the force of law the arbitrator may award interest. Again if there are any other provisions of the substantive law enabling the award of interest the arbitrator may award interest. By way of an illustration, we may mention section 80 of the Negotiable Instruments Act as a provision of the substantive law under which the Court may award interest even in a case where no rate of interest is specified in the promissory note or bill of exchange. We may also refer section 61(2) of the Sale of Goods Act which provides for the award of interest to the seller or the buyer as the case may be under certain circumstances in suits filed by them. We may further cite the instance of the non-performance and to award interest. We may also cite a case where one of the parties is forced to pay interest to a third party, say on an overdraft, consequent on the failure of the other party to the contract not fulfilling the obligation of paying the amount due to them. In such a case also equity may compel the payment of interest. Loss of interest in the place of the right to remain in possession may be rightfully claimed in equity by the owner of a property who has been dispossessed from it."

In *State of Orissa v. B.N. Agrawala*, 1993 A.T.L.R. 212 page 216 of para 10, the Supreme Court had followed the decision in *Jena's* case that the Arbitrator had no power to award interest for the pre-reference period as the award was made prior to coming into force of the Interest Act, 1978. Hence, the arbitrator has limited power to grant interest in

The award of interest by arbitrator has itself been an area of conflict until recently and there have been rather confusing interpretations. However, a recent decision of the apex court has settled the law relating to award of interest. This article examines this question in the light of the Supreme Court's decision.

exceptional cases as specified in *Jena's case* above i.e., to say if agreement provides, uses of trade, having force of law provide, if there are any other provisions of substantive law.

(b) Awards after 19.8.1981

The Interest Act, 1978, included a tribunal and an arbitrator in the definition of court and hence, arbitrator was granted jurisdiction to give an award of interest for this period. The result is that in cases arising after 19.8.1981 i.e., commencement after Interest Act, 1978, an arbitrator has the same power as the court to grant interest from the date of cause of action to the date of institution of proceedings.

II. POST REFERENCE PERIOD (AFTER REFERENCE OF DISPUTES TO ARBITRATOR TILL THE DATE OF MAKING AWARD BY THE ARBITRATOR)

The question of grant of interest for this period was examined in detail in *Jena's case* (Supra) by the Supreme Court and it had held that the arbitrator cannot allow *pendente lite* interest under section 34 of the Civil Procedure Code, 1908, as he was not a court within the meaning of that section unless reference is made to him through intervention of a court. Thereafter many awards were set aside or modified by courts all over India by following the decision pronounced by Supreme Court in *Jena's case*. But the decision in *Jena's case* regarding *pendente lite* interest was over-ruled by a larger Bench of the Supreme Court in - *Secretary, Irrigation Department v. G.C. Roy*, AIR 1992 SC 732 and in para 45 it was held as under:

"Where the agreement between the parties does not prohibit grant of interest and where a party claims interest and that dispute (along with the claim for principal amount or independently) is referred to the arbitrator, he shall have the power to award interest *pendente lite*. This is for the reason that in such a case, it must be presumed that interest was an implied term of the agreement between the parties and, therefore, when the parties refer all their disputes - or refer the dispute as to interest as such—to the arbitrator, he shall have the power to award interest. This does not mean that in every case the arbitrator should necessarily award interest *pendente lite*. It is a matter within his discretion to be exercised in the light of all the facts and circumstances of the case, keeping the ends of justice in view."

In another interesting decision in the case of *Santokh Singh Arora v. Union of India*, AIR 1992 SC 1809, the Supreme Court had observed that interest should have been allowed for the period the matter was pending in arbitration since appointment of the arbitrator by the named authority and in courts in proceedings arising therefrom till the date of award by the last arbitrator appointed by the court. In that case the first arbitrator was appointed on 8-12-1968, but his award was set aside and thereafter two arbitrators were appointed by the appointing authority but they could not make the award and thereafter court appointed an independent arbitrator i.e., Justice A.C. Gupta whose award was subsequently remitted but he was not prepared to act as arbitrator any longer, hence Justice Gujral was appointed as an arbitrator who made his award on 18.8.1990 along with 12 per cent interest per annum from 21.11.1983 i.e., the period when dispute was referred to Justice A.C. Gupta as arbitrator. The arbitrator had not granted interest for the period prior to reference to Justice A.C. Gupta. In these circumstances, the Supreme Court, instead of remitting

the matter to arbitrator again granted interest itself while deciding the case and has held in para 8 as under:

".....Since interest was being allowed for period during which the matter was pending in arbitrator before Justice A.C. Gupta and the learned arbitrator, the interest should also have been allowed in respect of the period during which the matter has been pending in arbitration ever since the Chief Engineer appointed Lt. Col. L.K. Raisinghani as the arbitrator by order dated 18-12-1968 and the matter was pending before the said arbitrator or his successors or in the courts in connection with proceedings arising out of the said arbitration. We are of the opinion that the appellant is entitled to be compensated for denial of his legitimate dues during the period from 18-12-1968 till the date of the award of the learned arbitrator. The appellant is also entitled to be compensated for the costs incurred in prosecuting his remedies before the arbitrators as well as in the courts below and before this Court."

Hence, the arbitrator is competent to grant interest for this *pendente lite* period as per the latest law as discussed above. Even if the arbitrator fails to grant interest for this period without assigning any reason and due to non application of mind, as the Supreme Court had granted interest in the case of *Santokh Singh Arora's case*, the court can also grant interest for this period.

III. POST AWARD PERIOD TILL DATE OF DECREE BY THE COURT

The earlier view was that the arbitrator cannot grant interest after date of award. The Supreme Court had held in *Gujarat Water Supply & Sewerage Board's case* (AIR 1989 SC 973) that interest for this period can be granted by the court in view of section 3(1) (a) of the Interest Act, 1978, and section 29 of the Arbitration Act. Thereafter the courts have granted interest for this period in a number of cases.

But Supreme Court has settled the controversy finally in case of *Hindustan Construction Co.* (AIR 1992 SC 2192) by holding that an arbitrator has power to award interest for the period from date of award to date of decree.

Hence, the arbitrator can award interest for this period and even court can grant interest for this period to give justice to the claimant in view of above two judgments of the Supreme Court of India.

IV. POST DECREE PERIOD TILL DATE OF PAYMENT

Section 29 of the Arbitration Act empowers only the court to grant interest for this period at such rate as deemed fit by the court. The courts generally grant the same rate of interest for this period as granted by the arbitrator. The arbitrator cannot certainly allow interest for this period. There are many judgements of courts regarding holding that the arbitrator cannot allow interest for this period.

CONCLUSION

It can be said that as per the law settled by various judgements of the Supreme Court, now the arbitrator can grant interest from the date when the cause of action arose to the date of payment or date of decree of the court whichever is earlier. However, after the date of decree the arbitrator cannot grant interest. But the court can grant interest after the passing of decree till date of payment. □