



Vivek R
Associate

SC ON GRANT OF POST-AWARD INTEREST ON INTEREST AWARDED BY ARBITRATOR

A. Introduction:

Supreme Court (“SC”), in *UHL Power Company* (“UHL”) case¹ observed that the Arbitrator can grant post-award interest on the interest awarded by the Arbitrator in the Arbitral Proceedings. It also made other pertinent observations.

B. Brief Facts:

1. Sole Arbitrator granted relief in favour of UHL in the arbitration proceedings against the State of Himachal Pradesh (“State”) by awarding pre-claim interest on the expenses incurred by UHL and awarded compound interest @ 9% per annum till the date of claim. In the event the awarded amount is not realized within six months, future interest was awarded @ 18% per annum on the principal claim along with interest.
2. Dissatisfied with the award, State filed petition² under The Single Judge disallowed the entire claim of the UHL. Aggrieved, UHL challenged before the Division Bench of High Court (“HC”).
3. The HC awarded a sum on Rs. 9 crores in favour of UHL, being the actual principal amount along with the simple interest @ 6% per annum from the date of filing of the claim till realization.
4. HC declined the payment of compound interest awarded by Sole Arbitrator by relying on *SL Arora* case³ where it was held that compound interest can be awarded only if there is a specific contract, or authority under a Statute for compound interest. No general discretion vested in courts or tribunals to award compound interest. 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 pre-award period or for the post-award period.
5. Aggrieved by the judgment, UHL and the State preferred separate Civil Appeals⁴ on differing grounds. Grievance of UHL was disallowance of the pre-claim interest *i.e.*, interest from when expenses were incurred by UHL till the date of filing the claim.

¹ *UHL Power Company Ltd vs. State of Himachal Pradesh* ([LiveLaw link to the judgment](#)).

² Section 34 of the Arbitration and Conciliation Act, 1996 (“Act”).

³ *State of Haryana vs. S.L. Arora and Co.* (2010) 3 SCC 690.

⁴ Civil Appeal No. 10341 of 2011 by UHL *No. 10342 of 2011* by the State.

C. Reasoning and Judgement:

The SC held as summarized below:

1. Referring to observation made in the *Hyder Consulting* (case⁵ it held that the verdict in *S.L. Arora* case is overruled by three-Judge Bench of SC and the majority view is that post-award interest can be granted by an Arbitrator on the interest amount awarded. It quashed and set aside the observation of the HC placing reliance of the *S. L. Arora* judgment and reversed the judgment insofar as it relates to grant of interest and restored the arbitral award in favour of UHL.⁶
2. Relying on the contractual terms, it agreed with HC's view and held that the Single Judge erred in re-appreciating the findings of the Arbitral Tribunal and taking an entirely different view in interpreting the relevant clauses of the Implementation Agreement governing the parties. It was not open to the Court to do so in proceedings under Section 34 of the Act by virtually acting as court of appeal.
3. Relying on *Dyna Technologies* case⁷ it observed that the interpretation of the relevant clauses of the Implementation Agreement, as done by the Sole Arbitrator are both possible and plausible. Merely because another view could have been taken can hardly be ground for the Single Judge to have interfered with the arbitral award.

D. Conclusion:

By relying on precedents, the SC has clarified on arbitrator's power to grant post-award interest on the pre-award interest. It has reiterated that the Arbitral Tribunal must decide in accordance with the terms of the contract. If a term of was construed in a reasonable manner, then the award ought not to be set aside merely on the ground that another view could have been taken by the tribunal.

This *Counselence Connect* contains information in a nutshell on a recent change in law. This is not legal advice and must not be treated so. For any clarifications, please contact us at: info@counselence.com. Past issues of *Counselence Connect* are available at the 'Newsletters' page of our website (www.counselence.com).

⁵ *Hyder Consulting (UK) Ltd vs. Governor, State of Orissa through Chief Engineer*, (2015) 2 SCC 189

⁶ Paragraph 6 of the Judgment.

⁷ *Dyna Technologies (P) Ltd vs. Crompton Greaves Ltd.* (2019) 20 SCC 1.