2026:AHC-LKO:76453-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW

APPEAL UNDER SECTION 37 OF ARBITRATION AND CONCILIATION ACT 1996 No. - 62 of 2023

State of U.P. through Additional Chief Secretary, Public Works Department, Government of U.P., Lucknow and others

…..Appellant(s)

Versus

M/s Apex Construction Company, Mathura through Director/ Proprietor Sri Jagdish Chowdhary and another

…..Respondent(s)

Counsel for Appellant(s)	:	Pritish Kumar (A.A.G.), Tushar Verma (A.C.S.C.)
Counsel for Respondent(s)	:	Akshat Kumar, Durgendra Kumar Tiwari, Sanjay Kumar Srivastava, K.K. Arora

---

AFR
Reserved on : 23.09.2026
Delivered on :24.10.2026

Chief Justice Court

HON'BLE ARUN BHANSALI, CJ.
HON'BLE JASPREET SINGH, J.

(Per:- Jaspreet Singh, J.)

1. The instant appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act of 1996') challenges the order passed by Commercial Court No. 1, Lucknow dated 09.02.2023, whereby the petition preferred by the appellant under Section 34 of the Act of 1996 was dismissed, as a consequence, the arbitral award dated 30.07.2017 was upheld.

(A) BRIEF FACTS:-

2. The dispute in question arises from a contract entered between the appellant and the respondent for the purposes of widening and strengthening of Raya-Math Road in District Mathura.

3. In terms of the contract, the claimant/respondent was required to widen and strengthen the said Raya-Math Road from 1.00 to 10.00 kilometers. Later, the work was increased to 12 kilometers; thereby, 2 kilometers of work was increased, and as a consequence thereof, the initial contract price of Rs.737.85 lakhs was enhanced to Rs.1137.29 lakhs. This contract price included the cost of bitumen and the cost of extra items No. 1 and 2 which was sanctioned on 23.09.2009 by the Competent Authority.

4. As per the respondent, the contract was awarded on 30.09.2008 initially for 1 to 11.8 km, and this work was enhanced to 12 km; hence, 200 meters of excess work was required to be done by the respondent. The contract price of Rs.1137.29 lakhs was enhanced to Rs.1279.30 lakhs.

5. As per the claimant/respondent, the work was to be completed by 30.09.2009, but it was completed on 31.08.2009. The claimant submitted its final bill on 31.08.2009 for Rs.5,31,58,238/-, which was disputed by the appellant State.

6. Initially, the respondent preferred a writ petition bearing No. 8773 (MB) of 2010, which was disposed on 04.04.2014 with liberty to the claimant/respondent to invoke the arbitration clause. The claimant preferred Arbitration Application No. 57 of 2014, which was dismissed as not maintainable as the arbitration clause was not appropriately

invoked. Hence, after proper invocation, the respondent preferred a fresh Arbitration Application No.42 of 2015, which came to be decided on 18.11.2015, which led to the formation of a three-member Arbitral Tribunal.

7. The claimant submitted its statement of claim on 31.01.2016, wherein a sum of Rs.23,79,90,727/- was sought to be recovered by the claimant from the appellant-State. *Pendente lite* and future interest at the rate of 18% per annum with quarterly rest was sought on the aforesaid amount from the date of filing of the statement of claim till the date of its actual payment. The claimants also prayed for the cost of the arbitration amounting to Rs.10 lakhs.

8. The aforesaid claims were disputed by the State-appellant, who filed their statement of defence on 11.11.2016. The primary ground of defence was that the claimants had breached the conditions of the contract and the work was not carried out as per the standard specifications and conditions as contained in the contract. It was also alleged that the claimant used sub-standard material and this was got verified through two separate teams comprising of engineers of the PWD and another by the CRRI (Central Road Research Institute). The said experts opined that a sum of Rs.4,65,862/- ought to be deducted from the running bills of the respondent. It also proposed a deduction of Rs.59,850/- for the sub-standard work.

9. It was also stated that initially the contract was for strengthening and widening 10 kilometers for a total consideration of Rs.4,72,38,885/-, which excluded the cost of bitumen. Later, the cost of the contract was

enhanced to Rs.1137.29 lakhs for the total length of Raya-Math Road, and this enhanced value included the cost of bitumen and extra items No. 1 and 2. Since the cost of bitumen was to be provided by the appellant and the enhanced work was only up to 11.8 kilometers, hence the contract value was Rs.5,96,35,888/-, out of which certain deductions as suggested by the CRRI were to be made, but the appellant erroneously paid Rs.5,80,71,340/- out of which the deductions were to be made. Thus, the defence was that an excess amount under the contract had already been paid; rather, it was for the appellant to recover some amount from the respondent. Accordingly, the respondent also set up a counter-claim to recover some amount from the respondent.

10. The Arbitral Tribunal on 05.03.2017 framed 10 issues on the basis of the pleadings, and three issues were framed on the counter-claim. The claimant/respondent examined four witnesses apart from filing documentary evidence, and the appellant State also examined three witnesses and filed its documentary evidence.

11. The arbitral tribunal, while making the award, upheld Issue No. 1 in favour of the respondent, while Issues No. 2 and 3 were considered together, and it was partly allowed and held that the claimant was entitled to Rs.1,56,79,034.65. Subject to the aforesaid amount, the other claims were rejected, including the claim for 5% escalation charge. Issues No. 4 and 5 were also taken up together, and it was held that the respondent had worked only up to 11.8 kilometers and there was no evidence regarding 200 meters of extra work. Issues No.7 and 8 were also decided against the claimant. Issue No. 9, which related to

limitation, had been decided as a preliminary issue on 30.04.2017, and it was found that the claims were not time-barred.

12. While dealing with Issue No. 6, which related to grant of interest, the Arbitral Tribunal awarded 12% interest with annual rest w.e.f. 01.09.2010 till the date of reference (that is, the date of filing of the statement of claim) and also up to the date of the award. It further provided that post-award interest at the rate of 14% would be payable with annual rest till the date of actual payment and the arbitration cost of Rs.10 lakhs was awarded in favour of the claimant against the State-appellant.

13. As far as the counter-claims were concerned, Issues No. 1 and 2 were held against the State-appellant, and Issue No. 3 was partly allowed in favour of the State, and a sum of Rs.1,39,619/- was held to be payable to the appellant, along with interest at the rate of 14% per annum w.e.f. 01.09.2009, and this amount was to be deducted from the amount awarded in favour of the claimant.

14. Thus, it would be seen that Issue No. 1 was held in favour of the claimant; Issue No. 2 was decided against the claimant; Issues No. 3 and 4 were partly allowed in favour of the claimant; Issue No. 6 was partly allowed; while Issues No. 5, 7, 8, and 9 were held against the claimant. Similarly, Issues No. 1 and 2 relating to the counter-claim were held against the State, and Issue No. 3 was partly allowed in favour of the State.

15. The State-appellant, being aggrieved with the award dated 30.07.2017, preferred a petition under Section 34 of the Act of 1996

before Commercial Court-1 at Lucknow bearing No. 235 of 2018. The said petition also came to be dismissed on 09.02.2023, and thus, being aggrieved, the instant appeal was preferred.

(B) SUBMISSIONS ON BEHALF OF THE APPELLANT :-

16. Shri Pritish Kumar, learned Senior Counsel & Additional Advocate General for the State of U.P., along with Shri Tushar Verma, learned Additional Chief Standing Counsel for the State-appellant, primarily raised two pronged submissions:

(i) **Non-issuance of Completion Certificate:-**

17. It was submitted that an Arbitral Tribunal is a creature of contract, and thus it is bound by the terms of the contract. A specific plea had been raised by the appellant that the entire work was not done by the contractor/respondent; whatever work was done was not satisfactory, and sub-standard material was used. It was further submitted that the appellant had not granted the certificate of completion to the respondent, and in absence thereof, it was not open for the Arbitral Tribunal to have held that the work was complete, especially when the completion of work was defined in the contract itself. In absence of any material or evidence regarding adherence to Clause 48.1 of the contract relating to the definition clause as contained in the contract, the finding recorded by the Arbitral Tribunal that the claimant/respondent had completed the work was *per se* bad in the eyes of law.

18. The recording of finding on completion of work, in absence of any completion certificate given by the appellant amounted to rewriting the contract by the Arbitral Tribunal, which was not in its domain, and this

was clearly a patent error which vitiated the award, and this aspect was raised by the appellant before the Commercial Court which has been turned down which is also a patent illegality and thus the judgment and order passed by the Commercial Court also incurs the vice of illegality and it is a fit case for the Appellate Court to intervene in terms of Section 37 of the Act of 1996.

19. It was further urged that the non-availability of the completion certificate was important for the reason that unless the work was complete and final bill was generated and approved, till then, it could not be ascertained as to how much work had been done by the claimant/respondent.

20. It was further pointed out that it was alleged by the claimant/respondent that it had submitted its final bill on 31.08.2009. However, this fact was denied by the appellant, and the Arbitral Tribunal recorded a finding that the alleged final bill dated 31.08.2009 submitted by the respondent was false and misleading, hence, it ignored the final bill, and even the claim made by the respondent seeking to recover 5% of escalation charge every year, was rejected.

21. Thus, where the claim of the respondent as well as its final bill were found to be misleading and false, coupled with the fact that the claimant could not produce any completion certificate, in such circumstances, the finding returned by the Arbitral Tribunal upholding the entitlement of the claimant/respondent for a sum of Rs. 1,56,79,034.65 was patently erroneous, and thus the award was liable to be set aside.

22. This aspect was also not considered appropriately by the Commercial Court, which vitiates the judgment of the Section 34 Court; hence, the appeal deserves to be allowed, setting aside the findings in respect of Issues No. 2 and 3.

(ii) INTEREST:-

23. The learned Senior Counsel for the appellant further submitted that the contract was silent regarding grant of interest. In such circumstances, the Arbitral Tribunal was not justified in granting interest for the pre-reference period, and that too compounding the same on yearly basis.

24. It was further submitted that in absence of any clause or condition in the contract regarding payment of interest, the Arbitral Tribunal was not justified in granting the interest from the date when the cause of action arose, i.e , 01.09.2009 till the date of actual payment, and that too compounding it annually, it was a jurisdictional error committed by the Arbitral Tribunal.

25. It was submitted that the Interest Act, 1978, in its definition clause, encompasses a tribunal and an arbitrator within the meaning of the word "court". It was further submitted that Section 3(3)(c) of the Act of 1978 does not empower the court to award interest upon interest. In other words, it was submitted that since the Arbitral Tribunal falls within the definition of the word "court" in terms of the Act of 1978, consequently, it was not empowered to grant interest upon interest (i.e. compound interest). Hence, the grant of compound interest by the Arbitral Tribunal was clearly prohibited.

26. Learned Senior Counsel for the appellant further submitted that even in terms of Section 31(7) of the Act of 1996 which can be split in two parts, that is, clause (a) and (b) of Section 31(7) of the Act of 1996. This provision does give discretion to the Arbitral Tribunal to award interest, but even the said statutory provision does not permit grant of compound interest. It was further submitted that there is a difference in the language employed by the Act of 1996 in context with clause (a) and (b) of Section 31(7) of the Act of 1996.

27. It was also urged that though the Arbitral Tribunal had awarded a cost of Rs. 10 lakhs, but that too has been capitalized upon which compound interest has been awarded, which indicates a jurisdictional error and patent illegality which was not appreciated by the Commercial Court.

28. It was submitted that the Arbitral Tribunal granted interest at the rate of 14% per annum with annual rest which was bad and against the terms of the contract, including the statutory provisions; hence, the award dated 30.07.2017 stood vitiated. Even the Commercial Court did not consider the statutory provisions appropriately, and thus both the award as well as the judgment passed by the Commercial Court stand vitiated and deserve to be set aside, and the appeal deserves to be allowed.

29. The learned Senior Counsel for the appellant has relied upon the following decisions:-

(a) Gayatri Balasamy v. ISG Novasoft Technologies Ltimited : (2025) 7 SCC 1,

(b) State of Haryana v. S.L. Arora & Company : (2010) 3 SCC 690,

(c) Hyder Consulting (UK) Ltd. v. State of Orissa : (2015) 2 SCC 189,

(d) HLV Ltd. v. PBSAMP Projects (P) Ltd. (2025) SCC OnLine SC 2062

(C) <u>SUBMISSIONS ON BEHALF OF THE RESPONDENTS:-</u>

30. The learned counsel for the respondent, while refuting the submissions of the learned counsel for the appellant, defended the award. It was urged that there was ample evidence on record which indicated that the work had been completed and that too prior to the date of completion. After perusal of evidence, the Arbitral Tribunal recorded a finding that the work had been done by the claimant/respondent, and the appellant could not lead any evidence to indicate that the work was not done. It also recorded a finding on the basis of the evidence that the work was satisfactory and in accordance with the standards, and in such circumstances, there was actually no dispute regarding the work done.

31. It was further submitted that due to political reasons, the work of the claimant was put to scrutiny, and even the third party who examined the work did not find any such anomaly which could lead to an inference that the claimant had not completed the work. It was further submitted that the reports of the PWD and the CRRI were placed on record, which indicated that the work had been done, and it also depicted why there was wear and tear of the road widened and strengthened by the claimant/respondent. The reason was clearly indicated that there was no substandard or faulty workmanship; rather, the standards and the criteria

given by the State was for roads to be plied by light and medium vehicles, but the said road was put to use by heavy vehicular traffic.

32. In such circumstances, it was for the appellant to have seen that in case if it chose the road to be widened and strengthened for heavy traffic, then the contract should have provided the criteria and standard for such use. The contract standards and criteria was for proposed use by light and medium vehicular traffic, but the appellant chose to put the road for different purposes by diverting the route, hence, the wear and tear could not be ascribed to the claimant.

33. The witnesses of the appellant were cross-examined, and they also could not point out any deficiency in the work of the claimant, and in such circumstances, the findings returned by the Arbitral Tribunal are pure findings of fact based on material evidence available on record, which are unassailable in proceedings under Section 34 as well as Section 37 of the Act of 1996.

34. It was further submitted that there was never any dispute that the work had not been done by the claimant, and this was only raised during the arbitral proceedings. The work stood completed, which was also noted during the third-party inspection. There was never any complaint made by the appellant indicating that the work was not complete or it was of substandard. However, the completion certificate was to be issued by the appellant, and despite the work having concluded and there being no complaint raised by the appellant regarding the workmanship, quality, or the completion of work, now, during arbitral proceedings, it cannot be urged that since there was no completion certificate, hence it would be

assumed that the work was incomplete. Thus, the said findings, which are based on evidence, cannot be unsettled in an appeal under Section 37 of the Act of 1996, hence, the first limb of submission of the appellant must fail.

35. The learned counsel for the respondent, while responding to the second submission relating to grant of interest, submitted that Section 31(7) of the Act of 1996 is a statutory provision which recognizes and confers power on the Arbitral Tribunal to grant interest both for the pre-reference period, *pendente lite*, and future interest. It clearly states that the Arbitral Tribunal is empowered to do so and grant interest as aforesaid at the rate which the arbitrator would deem appropriate.

36. It was further submitted that in case if the rate of interest is not provided, then as per the statutory prescription contained in Section 31(7) of the Act of 1996, the rate of interest would be 2% of the general lending rates as applicable to the public sector banks.

37. It was urged that in the instant case, the Arbitral Tribunal found that the work was completed by the claimant, and even though the final bill was found to be misleading, yet, considering the evidence including the admission of the appellant, it found that the appellant was entitled to a sum of Rs.1,56,79,034.65. This amount was payable to the claimant upon completion of work, which was done by 31.08.2009; thus, from 01.09.2009, interest has been allowed.

38. It was further submitted that on the date when the award was made, i.e. 30.07.2017, the rights of the claimant/respondent were crystallized, and thus from that date onwards till the date of actual

payment, the Arbitral Tribunal has provided 14% interest with annual rest, which cannot be faulted. It was urged that there is no bar for the Arbitral Tribunal to grant interest, nor there is any bar on the rate of interest.

39. Section 31(7) would come into the picture when there is no rate of interest provided by the Arbitral Tribunal for the post-award interest. In the instant case, where the Arbitral Tribunal has provided for the post-award interest, hence Section 31(7)(b) has got no applicability. Evan the mode as provided by the Arbitral Tribunal does not fall foul of the banking practice, since the banks, while lending the amount to the creditors, charge interest with quarterly rest. In the instant case, the Arbitral Tribunal has provided for interest on yearly rest, which cannot be said to be arbitrary nor cumbersome. Hence, the submission raised by the appellant relating to the grant of interest, also has no legs to stand and must fail.

40. It was urged that the findings returned by the tribunal are based on proper appreciation of evidence, and once a view has been formed by the Arbitral Tribunal on evidence, within the domain of the contract, such findings cannot be assailed either in Section 34 or Section 37 of the Act of 1996; thus, for the aforesaid reasons, the appeal deserves to be dismissed.

41. The learned counsel for the respondent has relied upon the following decision:-

(a) Haryana Tourism Limited v. M/s Kandhari Beverages Limited : (2022) 4 SCC 116.

(D) ANALYSIS:-

42. The Court has heard learned counsel for the parties and also perused the material on record.

43. The first submission of the learned Senior Counsel for the appellant is focused on the premise that the work was not completed by the respondent. No completion certificate was issued and whatever work was done by the respondent was incomplete and substandard. Even otherwise, the amount paid by the appellant to the respondent was on the higher side. Upon inspection of the work done by the respondent, there were reports, which highlighted the deficiencies and it was recommended that a determined amount as suggested in the report should be deducted from the bill submitted by the respondent.

44. In this backdrop, the submission was that there was no outstanding amount payable to the respondent rather the amount which had already been paid was more than what the respondent deserved and even from the amount so paid, some deductions were to be made. Thus, the amount of Rs.1,56,79,034.65/- as held by the Arbitral Tribunal to be paid to the respondent is erroneous.

45. In order to examine the weight and correctness of the aforesaid submission, it will be relevant to notice few facts.

(a) In the statement of claim filed by the respondent before the Arbitral Tribunal, it was pleaded that the respondent was granted the contract of widening and strengthening of Raya-Math Road. The initial contract was for 1 kilometer to 11.80 kilometers with initial cost of Rs.737.85 lakhs. On 21.01.2009, the appellant had informed the

respondent that the total cost of the project had been enhanced to Rs.1137.29 lakhs.

(b) According to the respondent, it had completed the entire work including the extra-work of 200 meters and the entire length of the Raya-Math Road was not 11.8 kilometers rather it was 12 kilometers.

(c) The appellant, in its statement of defence filed before the Arbitral Tribunal, specifically pleaded in Paragraphs 5 and 6 that the cost of the contract was initially Rs.737.85 lakhs and subsequently had been enhanced to Rs.1137.29 lakhs and this amount included the cost of the bitumen and the cost of extra-item No.1 and 2 as sanctioned by the Competent Authority on 23.05.2009.

(d) In Paragraph-9, it was stated by the appellant that the claimant/respondent herein was to be paid Rs.4,72,38,088/- for the work excluding the cost of bitumen under the contract for only 10 kilometers of Raya-Math Road.

(e) It was further pleaded that since the cost of the contract was enhanced from Rs.737.85 lakhs to Rs.1137.29 lakhs for the entire length of Raya-Math Road and it included the cost of bitumen and extra-item No.1 and 2. The appellant in the same paragraph also pleaded that the respondent had already been paid a sum of Rs.5,80,71,340/-.

(f) In Paragraph-16 of the statement of defence, the same contention was repeated and it was stated that the total work done by the respondent under the contract was worth Rs.5,96,35,888/- and from the said amount, a deduction was to be made, based on the report by CRRI for a sum of Rs.79,769/-.

(g) Again in Paragraph-22 of the statement of defence, it was stated that with the enhancement of the contract value from Rs.737.85 lakhs to Rs.1137.29 lakhs for the total length of Raya-Math Road inclusive of the cost of the bitumen and for extra-item No.1 and 2. The contract was valued at Rs.5,96,35,888/- against which the respondent had been paid a sum of Rs.5,80,71,340/- from which a sum of Rs.79,769/- was to be deducted as per the report of CRRI and a sum of rupees Rs.6,70,000/- was to be deducted as the proportionate share of the respondent for their liability for the loss caused to the State in not executing the work as per the specifications and standards as mentioned in the contract.

46. In the aforesaid background of the pleadings, the issues were framed and for the instant appeal, the following issues are important to be noted, which read as under:-

> (i) Whether the Claimants completed the constructed work as per the specifications and standards?
>
> (ii) Whether the Claimants were entitled for payment of Rs.1279.30 lacs alongwith 5% escalation charge per year?
>
> (iii) Whether the balance payment of Rs.5,31,58,238.00 of Claimants remained due against the opposite parties?
>
> (iv) Whether the actual length of the road constructed by the Claimant is 11.800 Km. or 12.000 Km. as claimed by the Claimant?
>
> (v) Whether the Claimants constructed Km 1 to Km 12 at Raya-Math Road and thus about 200 meter excess road was constructed by the Claimants and resultantly the cost of construction exceeded from Rs.1137.29 Lakhs to Rs.12,79,30,440/- Lakhs?

47. After the evidence was led, the Arbitral Tribunal while dealing with Issue No.1 as to whether the claimant completed the work as per specifications, a finding was returned that the claimant had completed the work as per the contract-bond including completing the extra-items

No.1 and 2 as per specifications and standards. There was no material to suggest that there was any defect or incomplete work nor there was any evidence that the appellant ever put the issue of incomplete and deficient work to the respondent. No notice was ever issued to the respondent pointing out any defects or for removal of any defects. Thus, Issue No.1 was decided in favour of the claimants.

48. Issues No.2 and 3 were taken up together by the Arbitral Tribunal. As far as the Issue No.2 is concerned, it related to whether the respondent was entitled for payment of Rs.1279.30 lakhs along with 5% escalation charge per year.

49. The Arbitral Tribunal recorded its findings against the claimant-respondent. Admittedly, the said finding regarding turning down the claim of 5% escalation was never assailed or challenged by the respondent/contractor and it attained finality.

50. As far as Issue No.3 is concerned, whether the claimant was entitled to recover the balance payment of Rs.5,31,58,238/-. The Arbitral Tribunal held that the final bill as submitted by the respondent was false and misleading. However, it found that the claimant-respondent had revised its claim and confined it to a sum of Rs.1,56,79,034.65/-. This amount claimed was on the basis of averments in the pleadings. It found that admittedly the contract-bond issued on 30.09.2008 indicated the value at Rs.4,72,38,885/-. To the aforesaid amount, the cost of the work of extra-items No.1 and 2 worth Rs.15025189.65 and Rs.1,14,86,300/- was added which brought the amount to Rs.7,37,50,374.65 from which the amount admittedly received by the respondent being

Rs.5,80,71,340/- if deducted would leads to a balance of Rs.1,56,79,034.65 which was payable to the respondent.

51. The Arbitral Tribunal also recorded a finding in respect of Issue No.4 that the respondent had completed the entire work of 11.800 kilometers and not 12 kilometers, as claimed by the respondent. Accordingly, while dealing with Issue No.5, it held that the claimant-respondent had completed the work of 11.800 kilometers and the contract value had not exceeded Rs.1137.29 lakhs.

52. Now, in terms of the General Conditions of Contract, the definition relating to the completion date is as under:-

> "The completion date is the date of completion of works as certified by the Engineer in accordance with Clause 48.1."

53. Clause 48.1 is also being noticed hereinafter for ease of reference:-

> "48. Completion of Construction and Maintenance:-
> 48.1 The Contractor shall request the Engineer to issue a certificate of completion of the construction of works, and the Engineer will do so upon deciding that the work is completed."

54. In light of the pleadings, contents of the General Conditions of Contract and the findings returned by the Arbitral Tribunal as noticed above, the record reveals:-

(a) That the total cost of the contract was admittedly Rs.737.85 lakhs.

(b) That the work was completed on 31.08.2009.

(c) No notice, complaint or any correspondence was initiated/issued by the appellant to the respondent pointing out non-completion, deficiency in work, use of substandard material was given by the appellant to the respondent.

(d) Even the report of the CRRI and U.P. Public Works Department did not make any observations that the entire work was not completed by the respondent. All what was indicated in the reports were certain deficiencies and the cause of the deficiency was not so much regarding bad workmanship, but was in context with the fact that the road was proposed to be used not for heavy vehicular traffic, but for light and medium vehicular traffic, which complemented the specifications with which the road was to be made. The said deficiency was an outcome of use of the said road for heavy vehicular traffic. The reports also suggested certain deductions to be made from the claim of the respondent, but there was no finding either to the effect that the work was incomplete or it was substandard.

55. In such circumstances, the contention of the appellant to suggest that the work was incomplete or was of substandard is not borne out from the evidence on record. Hence, the finding returned by the Arbitral Tribunal that the respondent completed the entire work of 11.8 km of Raya-Math Road being a finding of pure fact based on evidence cannot be said to be perverse. In this view of the matter, the contention of the learned Senior Counsel for the appellant that no completion certificate was issued by the appellant will mean that the work was incomplete is completely misplaced.

56. The learned Senior Counsel could not dispute the fact that the appellant never put the respondent to notice regarding incomplete, bad workmanship or use of substandard material in the contractual work. Since, the evidence clearly indicated that the work had been done, hence,

merely because the completion certificate was not issued by the appellant it would not mean that the work was incomplete. The record reflects overwhelming evidence against the said contention which was considered by the Arbitral Tribunal as well as the Section 34 Court. Hence, the submission of the learned Senior Counsel that absence of completion certificate would amount to the work not being completed and the finding returned by the Arbitral Tribunal that the work was completed amounted to rewriting the contract, is patently misconceived and it does not find favour with this Court. Consequently, the first submission advanced on behalf of the appellant is turned down.

57. The second submission of the learned Senior Counsel for the appellant revolves around the issue of grant of compound interest by the Arbitral Tribunal.

58. Examining the aforesaid contention, the following undisputed facts emerge from the record:-

(i) The contract entered between the parties is silent on the issue of grant of interest irrespective whether simple or compound.

(ii) In absence of any stipulation contained in the contract for grant of interest, naturally ushers the statutory provision to fill the silence in the contract.

59. At this stage, it would be gainful to peruse the award to understand as to how the Arbitral Tribunal has considered the issue of grant of interest.

60. In this regard, the Arbitral Tribunal had framed Issues No.6 and 8, which are reproduced hereinafter for ease of reference:-

> "(vi) Whether the Claimants are entitled to interest @ 18% P.A. quarterly rest comes to the tune of Rs.8,48,32,489.00 (Eight Crore Forty Eight Lakh Thirty Two Thousand Four Hundred Eighty Nine) as on 31.01.2016 w.e.f. 01.09.2009?
>
> (viii) Whether Claimant is further entitled to interest @ 18% P.A. with quarterly rest during the pendency of this petition and till the payment of Rs.23,79,90,727.00 is made to the Claimants by the opposite parties or on any amount?"

61. While deciding Issue No.6, the Arbitral Tribunal took note of Section 31(7) of the Act of 1996 and in its award, it held as under:-

> "(vi) Whether the Claimants are entitled to interest @ 18% P.A. quarterly rest comes to the tune of Rs.8,48,32,489.00 (Eight Crore Forty Eight Lakh Thirty Two Thousand Four Hundred Eighty Nine) as on 31.01.2016 w.e.f. 01.09.2009?
>
> On the discussions and findings on Issue Nos.2 and 3 it has been found that the claimant is only entitled to an amount of Rs. 1,56,79,034.65. In the contract bond there is no interest specified, if any part of the amount found due remains unpaid. We have also not been shown any conditions of payment of interest in the General Conditions of Contract and thus in accordance with Section 31 (7)(a) of the A.C. Act the interest unless and otherwise agreed by the parties, is to be left to be determined by the Arbitral Tribunal. Such interest should be reasonable, for the whole or any part of the period between the day of which the cause of action arises and on the date of which award is made. Sub-Section (b) inserted in Section 31(7) by the Arbitration and Conciliation Amendment Act, 2015, provides that a sum directed to be paid by an arbitral award shall, unless the award otherwise directs will carry interest at the rate of two per cent higher than the current rate of interest prevalent on the date of award, from the date of award to the date of payment.
>
> The Claimant is thus held entitled to reasonable interest at the rate of 12% which is average lending rate of nationalized banks, compounded yearly, on the amount awarded to it w.e.f. 1.9.2010, till the date of reference, and thereafter upto the date of the Award. The Claimant is also held entitled to the interest at the same rate after the date of the Award till the amount awarded by the Arbitral Tribunal is realized from the Respondent."

62. Similarly, while dealing with Issue No.8, the Arbitral Tribunal in its award held as under:

> "On the findings on Issue Nos.2, 3 and 6 the Claimant is not held entitle to the payment of claimed amount of Rs.23,79,90,727.00 and thus there is no question of any payment of interest on this amount during the pendency of the petition. While deciding Issue No.6 we have already held the Claimant entitle to 14% interest compounded annually on the amount awarded from

> 1.9.2009. No further interest is liable to be paid to the Claimant. The Issue No.(viii) is thus answered against the Claimant."

63. Then, in the conclusion drawn by the Arbitral Tribunal in its award, it held as under:

> "29. Conclusion:
>
> The claim petition is allowed to the extent that the Claimant is held entitled to an amount of Rs.1,56,79,034.65 with 14 % interest w.e.f. 1.9.2009 compounded annually till the date of reference for arbitration and thereafter during the period of proceedings of the Award, and also thereafter until its realization. The Claimant is also entitled to Rs.10 Lakhs as cost of the proceedings. An amount of Rs.1,39,619/- recommended by CRRI and TAC to be deducted from the final bill alongwith 14% interest from 1.9.2009, shall be deducted from the amount awarded to the Claimants.
>
> The Arbitrators confirm that they has received the arbitration fees for the Claims and Counter Claims, and expenses for preparing the Award.
>
> Both the parties were required to and have agreed that this Award may be delivered at Lucknow."

64. From a perusal of the aforesaid portion of the award, it indicates that the respondent were held to be entitled to recover a sum of Rs.1,56,79,034.65 with 14% interest with effect from 01.09.2009 compounded annually till the date of reference for arbitration and thereafter for *pendente lite* and future interest, the same rate of interest was provided, with annual compounding, till its recovery.

65. The respondent was also to be entitled to the cost of Rs.10.00 lakhs.

66. The award further provided that from the amount awarded to the claimant, as aforesaid, the appellant was entitled to deduct a sum of Rs.1,39,619/- along with 14% interest from 01.09.2009.

67. At this stage, it will be worthwhile to refer to certain provisions of The Interest Act, 1978 (for short, 'the Act of 1978'), wherein in Section 2, the word 'Court' has been defined as under:-

> "**2. Definition.**- x x x
> (a) "Court" includes a tribunal and an arbitrator."

68. Section 3 of the Act of 1978 and its relevant sub-section is being reproduced:-

> "**3. Power of Court to allow interest.(1)** x x x
> (2) x x x
> (3) Nothing in this section -
> (a) x x x
> (b) x x x
> (c) shall empower the court to award interest upon interest."

69. In the very same vein, it will be relevant to refer to Section 31(7) of the Act of 1996, which reads as under:

> "**31. Form and contents of arbitral award**.—x x x
> (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 two per cent higher than the current rate of interest prevalent on the date of award, from the date of award to the date of payment.
>
> Explanation.-The expression "current rate of interest" shall have the same meaning as assigned to it under clause (b) of section 2 of the Interest Act, 1978 (14 of 1978)."

70. Noting the fact that the contract between the parties is silent regarding grant of interest, hence, it will be important to examine how Section 3 of the Act of 1978 and Section 31(7) of the Act of 1996 will interact. In this context, it will first have to be determined, whether the Arbitral Tribunal has the power to grant interest, on two fronts:-

(a) interest prior to the arbitral reference; and

(b) the award of interest *pendente lite* and future.

71. Section 31(7) of the Act of 1996 expresses the legislative intentions relating to the grant of interest in Arbitral proceedings. Section

31(7) of the Act of 1996 has two components: Clause (a) and Clause (b). **Clause (a)** refers to the discretion conferred upon the Arbitral Tribunal to grant interest at reasonable rate for the period prior to the reference, whereas **Clause (b)** incorporates the legislative mandate (which is not discretionary) requiring the Arbitral Tribunal to grant interest. It would further reveal that in case if the rate of interest is not provided then the rate of interest would be 2% above the lending rates of the nationalised banks.

72. What is relevant to notice is that Section 31(7) operates only in those situations, where the contract is silent regarding the grant of interest. Admittedly, the contract in the instant case does not provide for grant of interest, hence, Section 31(7) definitely stands attracted. Therefore, it cannot be said that the Arbitral Tribunal did not have the jurisdiction or authority to grant interest for two separate periods that is prior to reference and the other relating to *pendente lite* and future interest.

73. Now, the question would be as to whether the Arbitral Tribunal can grant compound interest and if so, whether for both the periods or in respect of any one, that is to say, prior to reference and future and *pendente lite*. This also needs to be seen from another angle as to whether the interest as granted by the Arbitral Tribunal amounts to compound interest or not.

74. As already noticed above, the Arbitral Tribunal has granted 14% interest with annually rest both for the pre-reference period as well as for *pendente lite* and future. It is also an undisputed fact that there is no

clause in the contract relating to grant of interest either simple or compound.

75. It is now too well settled to be disputed that the compound interest cannot be granted unless there is a stipulation in the contract. The Arbitral Tribunal is a creature of the contract and it is bound to act within the four corners of the contract. In this context, it will be clear that since the contract does not provide for grant of interest, hence, the Arbitral Tribunal, in the instant case, did not have the right to grant at least compound interest. This aspect of the matter was considered by the Constitution Bench of the Apex Court in **Central Bank of India v. Ravindra : (2002) 1 SCC 367**, wherein tracing the history of banking practices in Paragraph-15, it held as under:-

> "15. In *National Bank of Greece S.A.* v. *Pinios Shipping Co. No. 1* [(1990) 1 All ER 78 (HL) : (1990) 1 AC 637] the House of Lords upheld the entitlement of the bank to the principal sum due to it, with interest thereon, as agreed, until payment or judgment in the usual way, and that the agreement included the term, implied by the usage of bankers, that the bank was entitled to capitalise interest, which in the case before Their Lordships, was (by concession) at quarterly rests and that such entitlement continued until judgment or payment. In the Court of Appeal [*National Bank of Greece S.A.* v. *Pinios Shipping Co. No. 1*, (1989) 1 All ER 213 (CA) : (1990) 1 AC 637], Lloyd, L.J., who wrote the leading order, was of the opinion that an implied agreement to pay compound interest with quarterly rest based on the banking practice exists during the currency of the banker-customer relationship but once the banker-customer relationship ceases the bank cannot charge compound interest and only simple interest would be payable. His Lordship traced the history of banking practice as borne out by judicial precedents, and held: (All ER p. 230*a-c* : AC p. 659)
>
> "(*i*) there is no right to compound interest save by agreement, express or implied, or custom binding on the parties; (*ii*) there was no express agreement to pay compound interest in the present case; (*iii*) an agreement to pay compound interest may be implied by virtue of acquiescence (*Lord Clancarty* v. *Latouche* [(1810) 1 Ball & B 420 (LC)]); but (*iv*) such an agreement is not normally implied except as to 'mercantile accounts current for mutual transactions' (*Deutsche Bank* v. *Banque des Marchands de Moscou* [(1931) 4 Legal Decisions Affecting Bankers 293 (CA)] , LDB at 295-296, per Greer, L.J.); (*v*) it is open to question whether the agreement between the bank and Pinios dated 8-2-1977 was an account current for mutual transactions; but, even if it was, it ceased to be such an account when the bank closed the

> account and demanded repayment on 13-11-1978; (*vi*) the bank never pleaded or proved a custom entitling it to continue to charge compound interest after the account had been closed, or, a fortiori, after it had issued proceedings for the recovery of debt.""
>
> * * *
>
> "*Conclusion which follows*
> 36. The English decisions and the decisions of this Court and almost all the High Courts of the country have noticed and approved long-established banking practice of charging interest at reasonable rates on periodical rests and capitalising the same on remaining unpaid. Such a practice is prevalent and also recognised in non-banking moneylending transactions. The legislature has stepped in from time to time to relieve the debtors from hardship whenever it has found the practice of charging compound interest and its capitalisation to be oppressive and hence needing to be curbed. The practice is permissible, legal and judicially upheld excepting when superseded by legislation. There is nothing wrong in the parties voluntarily entering into transactions, evidenced by deeds incorporating covenant or stipulation 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."

76. Now, it is to be seen as to whether the manner in which the interest has been granted by the Arbitral Tribunal amounts to compound interest or not.

77. In this regard, if Section 2(a) and Section 3(3)(c) of the Act of 1978 is seen, it would indicate that the word 'Court' includes an Arbitrator and Section 3(3)(c) postulates a proscription from granting interest upon interest. This concept of interest upon interest is something which in local usage or colloquially is termed as compound interest. Apparently, compound interest or the interest to be compounded annually is nothing but a specie of compound interest.

78. In the banking industry generally a lending bank may add the interest every quarter or annually but that is only a methodology of charging interest, but nevertheless it still remains under the umbrella of compound interest.

79. Thus, where in Section 3(3)(c) of the Act of 1978, there is a clear stipulation that the Arbitrator may not grant interest upon interest, accordingly, in absence of any contractual or statutory condition, the Arbitral Tribunal cannot grant compound interest or interest upon interest.

80. From a perusal of Section 31(7) of the Act of 1996, it would reveal that Clause (a) confers discretion on the Arbitral Tribunal to grant interest at a reasonable rate, which relates to pre-reference stage. Hence, the grant of 14% interest for pre-reference stage, cannot *per-se* be held to be bad, moreso, when Section 31(7)(a) of the Act of 1996 being a default clause, comes into play and the discretion has been exercised by the Arbitral Tribunal positively in absence of any contractual condition prohibiting grant of interest for the pre-reference stage.

81. In the instant case, the Arbitral Tribunal has exercised its discretion and has awarded interest at 14% per annum upto reference stage cannot be faulted.

82. Even for the post-reference stage, that is, *pendente lite* and future interest, Section 31(7)(b) of the Act of 1996 would come into the picture as the contract is silent. The Arbitral Tribunal has clearly granted interest payable at 14% for *pendente lite* and future and for the period too, it cannot be said that the Arbitral Tribunal did not have the jurisdiction to grant the interest and even the rate of 14% interest per annum is not bad as to be questionable.

83. Now, the difficulty arises to determine as to whether for the two separate period, that is, upto reference stage and for *pendente lite* and

future, the interest could have been granted with annual rest, which is nothing, but another way of saying that at the end of each year the interest would stand capitalized with the original amount and for the subsequent year the interest would be chargeable on the previous year's capitalized amount (principal + interest) and in a way is interest upon interest.

84. This controversy has been the subject matter of various decisions rendered by the Apex Court. Lately, the Apex Court in **HLV Limited (supra)** had the occasion to consider this aspect again and by taking note of its earlier decisions in Hyder Consultant (U.K. Limited) v. Governor, State of Orissa : (2015) 2 SCC 189; and Morgan Securities and Credit Private Limited v. Videocon Industries Limited : (2023) 1 SCC 602, North Delhi Municipal Corporation v. S.A. Builders Limited : (2025) 7 SCC 134, **State of Haryana v. S.L. Arora : (2010) 3 SCC 69** and noticing the provisions of Section 31(7) of the Act of 1996, the Apex Court clarified the law. The question before the Apex Court was noticed in HLV Ltd. (supra) in Para-2 is as under:-

> "**2.** Question for consideration in this appeal is whether in the facts and circumstances of the case, the decree-holder (respondent) would be entitled to interest upon interest in terms of Section 31(7)(*b*) of the Arbitration and Conciliation Act, 1996 or the interest awarded by the Arbitral Tribunal in the award dated 8-9-2019 in terms of the memorandum of understanding dated 9-4-2014 entered into between the parties i.e. between the appellant and the respondent fulfil the requirement of Sections 31(7)(*a*) and (*b*) of the said Act?

85. Then the Apex Court referred and considered the earlier decisions and noted the same in the following paragraphs:-

> **"11.** Decree-holder i.e. the respondent filed a calculation sheet before the executing court claiming compound interest over and above the rate of interest i.e. 21 per cent as awarded by the Arbitral Tribunal. The executing court referred to Section 31(7) of the 1996 Act as well as to the decision of this Court in *Hyder Consulting (UK) Ltd.* v. *State of Orissa* [*Hyder Consulting (UK) Ltd.* v. *State of Orissa*, (2015) 2 SCC 189 : (2015) 2 SCC

(Civ) 38] , and thereafter held that claim of the decree-holder for compound interest on the awarded amount was not sustainable. The executing court cannot go beyond the award passed by the Arbitral Tribunal. The decree-holder is not entitled for compound interest as claimed. The amount paid by the judgment-debtor to the decree-holder i.e. Rs 44,42,05,254.00 was in full satisfaction of the arbitral award. Accordingly, by the order dated 2-11-2023 executing court closed CEP No. 5 of 2021.

12. This order came to be assailed by the respondent before the High Court in a proceeding under Article 227 of the Constitution of India which was registered as Civil Revision Petition No. 60 of 2024. By the impugned judgment and order dated 22-4-2024 [*PBSAMP Projects (P) Ltd.* v. *HLV Ltd.*, 2024 SCC OnLine TS 632] , the High Court was of the view that the executing court had reached the conclusion in a cryptic and cavalier manner. Therefore, the order dated 2-11-2023 was set aside and the matter was remitted back to the executing court to reconsider the issue of interest under the award dated 8-9-2019 to the respondent though clarifying that it had not expressed any opinion on the merit of the claim.

* * *

14.6. Placing reliance on a subsequent decision of this Court in *Morgan Securities & Credits (P) Ltd.* v. *Videocon Industries Ltd.*, the learned Senior Counsel submits that this judgment has clarified the proposition laid down in *Hyder Consulting* by holding that an Arbitral Tribunal has the discretion to grant post-award interest either on the whole ‘sum’ or part of it. The decision in *Hyder Consulting* would only be applicable when the award is silent about payment of interest and not when the award clearly spells the method of paying interest including future interest. In fact, *Morgan Securities* has clarified the law laid down in *Hyder Consulting* by holding that when the award specifies the method of paying future interest, then *Hyder Consulting* would have no application. Therefore, the High Court clearly fell in error when it held that *Morgan Securities* would not apply to the facts of the case and remanding the matter back to the executing court for fresh decision placing reliance on *Hyder Consulting*.

* * *

18. From a perusal of the aforesaid provision, it is seen that Section 31(7) has got two clauses: clause (*a*) and clause (*b*). Clause (*a*) starts with the expression ‘unless otherwise agreed by the parties’. Thereafter, it says that where an award is for 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 and for the whole or any part of the period from the date when the cause of action arose to the date when the award is made. In other words, clause (*a*) empowers the Tribunal to include interest in the ‘sum’ for which the award is made.

* * *

20. Clause (*a*) of Section 31(7) of the 1996 Act was examined by this Court in *S.A. Builders* [*North Delhi Municipal Corpn.* v. *S.A. Builders Ltd.*, (2025) 7 SCC 132 : (2025) 3 SCC (Civ) 388] whereafter it was held as under: (SCC pp. 155-56, para 36)

“*36. … 36.1.* From a minute reading of sub-section (7), it is seen that it has got two parts: the first part i.e. clause (*a*) deals with passing of award which would include interest up to the date on which the award is made. The second part i.e. clause (*b*) deals with grant of interest on the “sum” awarded by the Arbitral Tribunal.

36.2. Let us now discuss in detail the contours of the two clauses. As per clause (*a*), when an award is made by the Arbitral Tribunal for payment of money, the “sum” which is awarded may include interest at such rate as the

Arbitral Tribunal deems appropriate, on the whole or any part of the money and for the whole or any part of the period. The period for which the interest may be granted would be between the date on which the cause of action arose and the date on which the award is made. The expression which needs to be noticed in this part is the following: *the Arbitral Tribunal* ***may*** *include in the sum for which the award is made interest at such rate as it deems reasonable*.

36.3. The word "may" appearing in the above expression is quite significant. It implies that the Arbitral Tribunal has the discretion to grant interest at a reasonable rate. In other words, it may grant interest or it may not grant interest; but if it grants interest, it would be included in the "sum" which is awarded by the Arbitral Tribunal."

(emphasis in original)

21. Insofar clause (*b*), as it stood at the relevant time is concerned, it provides for award of interest by the Arbitral Tribunal on the 'sum' adjudged under clause (*a*). It says that 'unless the award otherwise directs', a sum directed to be paid by an award shall carry interest at the rate of 18% per annum from the date of the award to the date of payment. In other words, clause (*b*) is subject to the interest that may be awarded by the Arbitral Tribunal. This provision was explained in *S.A. Builders* [*North Delhi Municipal Corpn.* v. *S.A. Builders Ltd.*, (2025) 7 SCC 132 : (2025) 3 SCC (Civ) 388] in the following manner: (SCC p. 156, para 36)

"*36*. … *36.4*. This brings us to the second part i.e. clause (*b*) which deals with post-award interest. The "sum" directed to be paid by the Arbitral Tribunal shall, unless the award otherwise directs, carry interest @ 18% p.a. from the date of the award to the date of payment. Thus, what clause (*b*) provides for is that the Arbitral Tribunal may award interest on the "sum" adjudged under clause (*a*). But if no such interest is awarded, then there shall be interest @ 18% on the "sum" awarded by the Arbitral Tribunal from the date of the award to the date of payment. The two crucial words in this part are *sum* and *shall*. As seen from clause (*a*), the "sum" awarded by the Arbitral Tribunal would include interest if it is granted by the Arbitral Tribunal. Therefore, the "sum" as awarded by the Arbitral Tribunal may or may not include interest. Whether the "sum" so awarded includes or does not include interest, it would carry further interest @ 18% from the date of the award to the date of payment unless another rate of interest is granted by the Arbitral Tribunal. While granting of interest under clauses (*a*) and (*b*) by the Arbitral Tribunal is discretionary, the interest contemplated under clause (*b*) in the event of failure of the Arbitral Tribunal to award interest is mandatory. Therefore, the legislature has consciously used the word *shall*."

(emphasis in original)

22. Thus, from a conjoint analysis of Section 31(7)(*a*) and Section 31(7)(*b*) of the 1996 Act, what is discernible is that insofar award of interest from the date on which the cause of action arose till the date of the award is concerned, the legislative intent is that the parties possess the autonomy to determine the interest and the rate of interest for the aforesaid period. Clause (*a*) i.e. discretion of the Arbitral Tribunal to award interest is subject to agreement by and between the parties. Therefore, party autonomy takes precedence over the discretion of the Arbitral Tribunal. However, clause (*b*) is subject to award of interest by the Arbitral Tribunal.

23. In other words, as per clause (*b*), the 'sum' directed to be paid under an arbitral award shall carry interest at the rate of 18% per annum from the date of the award to the date of payment 'unless the award otherwise directs'. Therefore, this provision is subject to award of interest by the Arbitral

Tribunal. If it awards interest, then the same shall be applicable from the date of the award till the date of payment; if not, then the 'sum' as adjudged under clause (*a*) shall carry interest at the rate of 18%.

* * *

25. The aforesaid clause in the MoU gave discretion to the respondent to terminate the MoU in which event it would be entitled to refund of the advance paid together with interest at the rate of 21% per annum from the respective dates of disbursement of the advances till the actual date of repayment.

26. The Arbitral Tribunal in the award dated 8-9-2019 applied the aforesaid clause of the MoU while declaring that the claimant was entitled to Rs 15.5 crores with interest at the rate of 21% per annum from the date it was given to the date it is paid. Therefore, it is evident that the Arbitral Tribunal was guided by the rate of interest provided in the MoU and it clarified while passing the award that this rate of interest would be available to the respondent from the dates of disbursement till the actual date of repayment.

27. A two-Judge Bench of this Court in *State of Haryana* v. *S.L. Arora & Co.* considered the question as to whether Section 31(7) of the 1996 Act authorises and enables Arbitral Tribunals to award interest on interest from the date of the award? In the facts of that case, the consequential question formulated was as to whether the arbitral award granted future interest from the date of award, only on the principal amount found due to the respondent or on the aggregate of the principal and interest up to the date of the award? After an analysis of the aforesaid provision, the Bench observed that Section 31(7) makes no reference to payment of compound interest or payment of interest upon interest. It was held that 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. It was held thus: (SCC p. 698, para 18)

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

28. Thereafter the Bench upon a threadbare analysis concluded that Section 31(7) merely authorises the Arbitral Tribunal to award interest in accordance with the contract and in the absence of any prohibition in the contract and in the absence of specific provision relating to interest in the contract, to award simple interest at such rates as it deems fit from the date on which the cause of action arose till the date of payment. The Bench further clarified that if the

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. In the facts of that case, the Bench declared that the calculation that was made in the execution petition as originally filed was correct and that the modification sought for by the respondent increasing the amount due under the award was contrary to the award. It was concluded as under: (SCC p. 704, para 34)

"*34*. Thus it is clear that Section 31(7) merely authorises the Arbitral Tribunal to award interest in accordance with the contract and in the absence of any prohibition in the contract and in the absence of specific provision relating to interest in the contract, to award simple interest at such rates as it deems fit from the date on which the cause of action arose till the date of payment. It also provides that if the 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. The calculation that was made in the execution petition as originally filed was correct and the modification by the respondent increasing the amount due under the award was contrary to the award."

29. The correctness of the view taken in *S.L. Arora* came up for consideration before a three-Judge Bench of this Court in *Hyder Consulting*. The majority held that the conclusion reached in *S.L. Arora* was not in consonance with the clear language of Section 31(7) of the Act. After extracting Section 31(7) of the 1996 Act, the Bench explained clause (*a*) of sub-section (7) of Section 31 in the following manner:

"*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 the 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."

(emphasis in original)

30. On the above analysis, the Bench explained clause (*b*) of sub-section (7) of Section 31 of the 1996 Act to mean 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 18% per annum for the post-award period unless otherwise ordered. The above provision was explained as under:

"*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 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."

(emphasis in original)

31. Finally, *Hyder Consulting* arrived at the following conclusion: (SCC p. 202, para 13)

"*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."

32. The question as to whether the 'sum' awarded under clause (*a*) of sub-section (7) of Section 31 of the 1996 Act would include interest *pendente lite* or not again came up for consideration before a two-Judge Bench of this Court in *Delhi Airport Metro Express (P) Ltd.* v. *DMRC*. The Bench analysed *Hyder Consulting* in the following manner:

"*15*. It could thus be seen that the majority view of this Court in *Hyder Consulting (UK)* is that the sum awarded may include the principal amount and such interest as the Arbitral Tribunal deems fit. It is further held that, if no interest is awarded, the "sum" comprises only the principal amount. The majority judgment held that clause (*a*) of sub-section (7) of Section 31 of the 1996 Act refers to the total amount or sum for the payment for which the award is made. As such, the amount awarded under clause (*a*) of sub-section (7) of Section 31 of the 1996 Act would include the principal amount plus the interest amount pendente lite. It was held that the interest to be calculated as per clause (*b*) of sub-section (7) of Section 31 of the 1996 Act would be on the total sum arrived as aforesaid under clause (*a*) of sub-section (7) of Section 31 of the 1996 Act. S.A. Bobde, J. in his judgment, has referred to various authorities of this Court as well as *Maxwell on the Interpretation of Statutes*. He emphasised that the Court must give effect to the plain, clear and unambiguous words of the legislature and it is not for the courts to add or subtract the words, even though the construction may lead to strange or surprising, unreasonable or unjust or oppressive results."

* * *

34. Thus, this Court was of the view that power of the Tribunal to award interest would operate if it is not otherwise agreed by the parties. If there is an agreement between the parties to the contrary, the Arbitral Tribunal would lose its discretion to award interest and will have to be guided by the agreement between the parties. Thus, the expression 'unless otherwise agreed by the parties' assumes significance and concluded as under:

"*20*. If clause (*a*) of sub-section (7) of Section 31 of the 1996 Act is given a plain and literal meaning, the legislative intent would be clear that the discretion with regard to grant of interest would be available to the Arbitral Tribunal only when there is no agreement to the contrary between the parties. The phrase "unless otherwise agreed by the parties" clearly emphasises that when the parties have agreed with regard to any of the aspects covered under clause (*a*) of sub-section (7) of Section 31 of the 1996 Act, the Arbitral Tribunal would cease to have any discretion with regard to the aspects mentioned in the said provision. Only in the absence of such an agreement, the Arbitral Tribunal would have a discretion to exercise its powers under clause (*a*) of sub-section (7) of Section 31 of the 1996 Act. The discretion is wide enough. It may grant or may not grant interest. It may grant interest for the entire period or any part thereof. It may also grant interest on the whole or any part of the money."

35. From the above, the view of the court is clearly discernible in that the discretion to grant interest would be available to the Arbitral Tribunal under clause (*a*) of sub-section (7) of Section 31 only when there is no agreement to the contrary between the parties. When the parties agree with regard to any of the aspects covered under clause (*a*) of sub-section (7) of Section 31, the Arbitral Tribunal would cease to have any discretion with regard to the aspects mentioned in the said provision. Only in the absence of such an agreement, the Arbitral Tribunal would have the discretion to exercise its powers under clause (*a*) of sub-section (7) of Section 31 of the 1996 Act.

36. In the facts of that case it was held that in view of the specific agreement between the parties, the interest quotient prior to the date of the award so also after the date of the award will be governed by Article 29.8 of the concession agreement which was also directed by the Arbitral Tribunal. This view was accordingly affirmed by this Court.

37. In *Morgan Securities & Credits (P) Ltd.* v. *Videocon Industries Ltd.*, a two-Judge Bench of this Court again examined the decision in *Hyder Consulting*. After an extensive analysis, the Bench was of the view that the decision in *Hyder Consulting* was on the limited issue of whether post-award interest could be granted on the aggregate of the principal and the pre-award interest. The opinion authored by Bobde, J. was limited to this aspect of post-award interest. Thereafter, the Bench noted that the issue before it was whether the phrase 'unless the award otherwise directs' in Section 31(7)(*b*) of the 1996 Act only provides the arbitrator the discretion to determine the rate of interest or both the rate of interest and the 'sum' it must be paid against. Thereafter it was noted that both clauses (*a*) and (*b*) of sub-section (7) of Section 31 are qualified. While clause (*a*) is qualified by the arbitration agreement between the parties, clause (*b*) is qualified by the arbitration award. The words 'unless otherwise agreed by the parties' occurring at the beginning of clause (*a*) qualifies the entire provision. However, the words 'unless the award otherwise directs' occurring in clause (*b*) only qualifies the rate of post-award interest. Thereafter, this Court summarised the findings and we extract only those portions which are relevant for our present purpose: (*Morgan Securities & Credits case*, SCC pp. 615-16, para 28)

"*28*. … *28.3*. The phrase "unless the award otherwise directs" in Section 31(7)(*b*) only qualifies the rate of interest.

28.4. According to Section 31(7)(*b*), if the arbitrator does not grant post-award interest, the award holder is entitled to post-award interest at eighteen per cent.

28.5. Section 31(7)(*b*) does not fetter or restrict the discretion that the arbitrator holds in granting post-award interest. The arbitrator has the discretion to award post-award interest on a part of the sum.

28.6. The arbitrator must exercise the discretionary power to grant post-award interest reasonably and in good faith, taking into account all relevant circumstances."

38. Though the learned Senior Counsel for the respondent placed heavy reliance on *S.A. Builders*, we are of the view that *S.A. Builders* is a continuum of what was held by this Court in *Delhi Airport Metro Express* and in *Morgan Securities and Credits*. We have already noted as to how a two-Judge Bench of this Court in *S.A. Builders* (of which I was also a member) had analysed clauses (*a*) and (*b*) of sub-section (7) of Section 31 of the 1996 Act. We have also noted that this Court had observed that the provision in Section 31(7)(*a*) of the 1996 Act begins with the expression 'unless otherwise agreed by the parties', thereby highlighting the legislative stance that the parties possess the autonomy to determine pre-award interest on the payment of money that may be awarded by the Arbitral Tribunal. However, no such discretion is available to the parties under Section 31(7)(*b*) of the 1996 Act though such discretion is available to the Arbitral Tribunal. It was in that context this Court in the facts of that case noted that it was not the case of the appellant that the interest portion is covered by the contract agreement between the parties. In the absence thereof, Section 31(7)(*a*) as well as Section 31(7)(*b*) of the 1996 Act would have their full effect. Therefore, it was concluded as under:

"*70*. That apart, it is not the case of the appellant that the interest portion is covered by the contract agreement between the parties. In the absence thereof, Section 31(7)(*a*) as well as Section 31(7)(*b*) of the 1996 Act would have their full effect. The sum awarded would mean the principal amount plus the interest awarded from the date of cause of action up to the date of the award. Thereafter, as per Section 31(7)(*b*) of the 1996 Act, the sum (principal plus interest) would carry interest @ 18% from the date of the award to the date of payment. This would be consistent with the law laid down by this Court in *Hyder Consulting*."

* * *

41. Therefore, reliance placed by the respondent on *Hyder Consulting* to claim post-award interest is misplaced. That principle would apply only when the Arbitral Tribunal leaves a matter unqualified or is silent. In the present case the Arbitral Tribunal bound by the MoU and exercising its statutory discretion had already specified the interest rate (21% per annum) and the duration (until repayment). As held in *Morgan Securities and Credits*, reaffirmed in *Delhi Airport Metro Express* and explained in *S.A. Builders*, once parties agree on the interest regime, the arbitrator's role is confined to enforcing it and the courts would not rewrite or enlarge the award by introducing further interest at the execution stage.

42. The MoU did not stipulate compounding of interest; the Arbitral Tribunal did not award compound interest; therefore, the respondent cannot at the stage of execution seek to introduce claim of compound interest by drawing on general principles. Allowing such a claim would amount to rewriting the award at the stage of execution which is impermissible."

86. In light of the law as propounded and clarified by the Apex Court and applying the principles to the instant case, it would be clear that the power of the Arbitral Tribunal to grant interest for pre-reference and post-reference stage is preserved, however, in absence of any specific

stipulation, compounding of interest/interest on interest is not permissible. Thus, the amount of Rs.1,56,79,034.65 has to be treated under two specific stages (i) for the pre-reference period, (ii) for *pendente lite* and future.

87. The rate of interest as awarded is actually not under challenge nor does this Court find that the rate of interest of 14% is on the higher side noting that the contract was commercial in nature. However, the aforesaid amount of Rs.1,56,79,034.65 would attract interest at 14% per annum for the pre-reference stage, that is, from 01.09.2009 till the date of filing of the claim petition, that is, 31.1.2016 and the aggregate amount which is crystallized on 31.01.2016 (principal + 14% simple interest), this crystallized amount shall then attract 14% interest per annum simple interest, till the date of actual recovery. The interest cannot be compounded on annual basis, by the Arbitral Tribunal, in absence of any contractual stipulation, hence, it did not have the power to provide interest to be compounded annually.

88. The entire amount as aggregated above would be treated as the amount payable to the respondent and from the said amount Rs.1,39,619/- along with 14% interest per annum simple interest would be calculated from 01.09.2009, till the date the amount is paid by the appellant to the respondent and this amount would be deducted as provided in the award.

89. It is only the issue of the interest payment compounded on yearly basis which is the cause of concern and which has been dealt with by

this Court above and to that extent, the award dated 30.07.2017 is liable to be modified.

90. Now, whether for this aspect of interest charge-ability can the award should be set aside as a whole. For this limited purpose, this Court does not deem fit to set aside the entire award and is of the opinion that the ends of justice can be met by correcting and modifying only part of the award relating to grant of interest.

91. This Court draws strength from the decision of the Apex Court in the case of **Gayatri Balasamy (supra)**, wherein the Constitution Bench of the Apex Court has held as under:-

> "(i) Only severable awards are amenable to modification;
>
> A composite or indivisible arbitral award cannot be modified. Modification is permissible only where the claims, or parts of the award, are legally and pragmatically severable from the valid portion. In such cases, the court may sever the invalid part while preserving the remainder of the award. This constitutes one of the essential guardrails laid down by the Supreme Court for the exercise of the limited power to modify an arbitral award;
>
> (ii) The error sought to be corrected must be patent and apparent on the face of the record;
>
> The Supreme Court has clarified that modification is confined to the correction of obvious and self-evident errors, such as clerical, computational, or typographical mistakes. Modification is permissible only where the court has no uncertainty or doubt as to the correction; if the alleged error is debatable or not apparent on

the face of the record, the court lacks jurisdiction to modify the award;

(iii) Modification is permissible for correcting or adjusting post-award interest;

Courts may modify an arbitral award where such modification is confined to the correction or adjustment of post-award interest, without disturbing the substantive findings of the Arbitral Tribunal;

(iv) Where modification is impermissible, the matter must be remanded;

In cases where the error cannot be corrected within the aforesaid guardrails and if it would require a review on merits or re-adjudication, the court must refrain from modifying the award and where permissible in law, remand the matter to the Arbitral Tribunal."

92. In light of the aforesaid discussions, this Court modifies the award dated 30.07.2017 only in respect of the manner in which the interest would be chargeable and all other findings will stand preserved. Hence, exercising powers under Section 37 of the Act of 1996 and in light of the principles laid down by the Apex Court in **Gayatri Balasamy (supra)**, this Court modifies the award dated 30.07.2017 to the extent that the respondent shall be entitled to a sum of Rs.1,56,790,34.65 alongwith 14% per annum simple interest w.e.f. 01.09.2009 till 31.01.2016 and the amount so crystallized on 31.01.2026 (principal + 14% per annum simple interest) shall attract interest from 01.02.2016 till the date of

actual payment @ 14% per annum simple interest and also clarified in Para-87 and 88 above.

93. Subject to the aforesaid modification relating to interest, the award dated 30.07.2017 with all its findings including the rate of interest shall stand affirmed.

94. With the aforesaid, the appeal is partly allowed. In the facts and circumstances, there shall be no order as to costs.

(Jaspreet Singh,J.) (Arun Bhansali, CJ.)

October 24, 2026
Asheesh/Rakesh/-