2026 INSC 1036

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2026
(@ SPECIAL LEAVE PETITION (CIVIL) NO. 24803 OF 2025)

North Eastern Electric Power Corporation Limited (NEEPCO) **... Appellant**

Versus

Astra Construction Private Limited **... Respondent**

J U D G M E N T

Alok Aradhe, J.

1. Leave granted.

2. This appeal calls in question the judgment dated 19.06.2025 rendered by the High Court[1], whereby the appeal preferred by the respondent under Section 37 of the Arbitration and Conciliation Act, 1996 (1996 Act) was allowed and the grant of pre-reference interest by the Arbitral Tribunal, earlier disallowed by the Commercial Court, was restored. The controversy, though narrow in compass, bears materially upon public works contracts generally, and turns upon the true meaning of Clause 54 of the General Conditions of Contract (GCC) governing the parties'

[1] High Court of Meghalaya at Shillong

agreement, and upon whether the said clause corresponds, in substance, to the clause construed by a three-Judge Bench of this Court in ***State of U.P. v. Harish Chandra and Co.***[2] or, instead, to the clauses considered in the later line of authority commencing with ***Sayeed Ahmed & Company v. State of U.P. & Ors.***[3].

FACTS

3. The facts, shorn of unnecessary detail, may be briefly noticed. On 12.06.1995, the appellant invited tenders for the civil works of the main plant and auxiliary building of a Gas Turbine Power Project at Ram Chandra Nagar, Tripura. The respondent's tender was accepted, and a formal agreement was executed between the parties on 23.05.1996. The estimated value of the work under the contract was Rs. 17,09,26,913/- (Rupees Seventeen Crore Nine Lakhs Twenty-Six Thousand Nine Hundred and Thirteen only), and the work was stipulated to be completed by 26.03.1997.

4. Disputes having arisen between the parties, the matter was referred to arbitration. The Arbitral Tribunal, by its award dated 05.06.2015, held that the delay in execution of the project was attributable to the appellant. Four claims preferred by the respondent were allowed, and a principal sum of Rs. 3.30 crores

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[2] **(1999) 1 SCC 63**

[3] **(2009) 12 SCC 26**

was awarded. The Tribunal further awarded pre-reference interest at the rate of 12% per annum on each of the claims, together with *pendente lite* and future interest at the rate of 9% per annum.

5. The appellant assailed the award before the Commercial Court under Section 34 of the Act. The Commercial Court, by its judgment dated 15.02.2024, placed reliance on the decision of this Court in ***Sayeed Ahmed*** (supra), and held that Clause 54 of the GCC bars the grant of interest, whether pre-reference or *pendente lite*. The award was modified accordingly, and the grant of pre-suit and *pendente lite* interest on claim nos. 2, 3, 4 and 5 was set aside as being contrary to Clause 54 of the GCC read with Section 31(7) of the Act, the award being otherwise upheld.

6. Aggrieved, the respondent preferred an appeal under Section 37 of the 1996 Act. The High Court, by the impugned judgment, relying upon ***Harish Chandra*** (supra), held that the clause considered therein was identical to Clause 54 of the GCC; that the bar under Clause 54 was confined to interest claimed on money or balances held up owing to a dispute; and that it did not extend to interest on any other head of claim, including interest upon an award itself. The High Court accordingly restored the award of the Arbitral Tribunal in its entirety.

SUBMISSIONS

7. Mr. Tushar Mehta, learned Solicitor General and Mr. Raghavendra P. Shankar, learned Additional Solicitor General, appearing for the appellant at the outset confined the challenge to that part of the impugned judgment which restores the grant of interest for the pre-reference period. He submitted that the plea that Clause 54 bars interest for the pre-reference and *pendente lite* period was specifically raised before the Arbitral Tribunal, and that the High Court erred in relying upon ***Harish Chandra*** (supra), a decision rendered under the Arbitration Act, 1940 (1940 Act), without appreciating that the question stood authoritatively settled, in the context of the 1996 Act, in ***Sayeed Ahmed*** (supra) and ***Jai Prakash Associates Limited*** *v.* ***Tehri Hydro Development Corporation Limited (THDC-I)***[4], and was accordingly no longer res integra. Reliance was additionally placed upon ***Ferro Concrete Construction (India) Pvt. Ltd.*** v. ***State of Rajasthan***[5] and ***ONGC*** v. ***G & T Beckfield Drilling Services Pvt. Ltd.***[6].

8. On the other hand, Mr. Ritin Rai, learned senior counsel for the respondent submitted that the plea founded on Clause 54 was

[4] (2012) 12 SCC 10
[5] 2025 SCC OnLine SC 708
[6] 2025 SCC OnLine SC 1888

never urged before the Arbitral Tribunal, and that the appellant must, in the circumstances, be held to have waived its right to raise it, placing reliance on ***Union of India*** v. ***Susaka Pvt. Ltd. and Ors.***[7] It was further submitted that the High Court rightly applied ***Harish Chandra*** (supra), and that the impugned judgment calls for no interference.

9. Mr. C.S. Vaidyanathan, learned senior counsel for the intervenors, submitted that Clause 54, on its true construction, does not disable the Arbitral Tribunal from awarding pre-award interest; that the prohibition is confined to claims for interest on money or balances lying with the appellant, and does not extend to other heads of claim such as damages; that the residuary words "or in any other respect whatsoever" take colour from, and are circumscribed by, the preceding specific language of the clause; and that a contrary construction would render the clause one-sided, arbitrary and constitutionally impermissible. Reliance was placed on ***Harish Chandra*** (supra), ***Reliance Cellulose Products Ltd.*** *v.* ***ONGC Ltd.***[8] and ***THDC-I*** (supra).

<u>CONSIDERATION</u>

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[7] (2018) 2 SCC 182

[8] (2018) 9 SCC 266

10. We have heard learned counsel for the parties and perused the record with care. Before adverting to the rival contentions, it is apposite to trace, in outline, the trajectory of the law governing the power of an Arbitral Tribunal to award interest, both under the 1940 Act and under the 1996 Act, for it is against this backdrop that the true character of a claim for pre-reference interest, and the effect thereon of a contractual bar, falls to be appreciated.

THE 1940 ACT

11. The 1940 Act contained no provision empowering an arbitrator to award interest. This was a real gap in the law, and a Constitution Bench of this Court filled it in ***Secretary, Irrigation Department, Government of Orissa and Others*** v. ***G.C. Roy***[9]. The Court held that where an agreement does not forbid the payment of interest, and a claim for interest is referred to arbitration, the law must presume that interest was an implied term of the bargain. On this reasoning, the arbitrator was held competent to award interest for the *pendente lite* period. The underlying principle is a simple one: a party kept out of money that is justly due to it ought, in the absence of a contrary stipulation, to be compensated for that deprivation.

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[9] **(1992) 1 SCC 508**

12. This Court, while dealing with claims for interest arising out of cases under Arbitration Act, 1940, consistently held that a contractual bar on interest, to be effective, had to be couched in clear and specific terms. Such a bar was to be construed strictly, and against the party who invoked it. This principle finds expression in a consistent line of decisions, namely, ***Union of India*** v. ***Ambika Construction***[10], ***Ambika Construction*** v. ***Union of India***[11], ***Reliance Cellulose Products Limited*** (supra), and ***Ferro Concrete*** (supra).

<u>THE 1996 ACT</u>

13. The 1996 Act altered this position by expressly conferring upon the Arbitral Tribunal the power to award interest, through Section 31(7), which reads as under:

> "**31(7)**(a) Unless otherwise agreed by the parties, where and in so far as an arbitral award is for the payment of money, the arbitral tribunal may include in the sum for which the award is made interest, at such rate as it deems reasonable, on the whole or any part of the money, for the whole or any part of the period between the date on which the cause of action arose and the date on which the award is made.
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> (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

[10] (2016) 6 SCC 36
[11] (2017) 14 SCC 323

> of award, from the date of award to the date of payment.
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> 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.)"

CHANGE BROUGHT ABOUT BY THE 1996 ACT

14. The difference between the two regimes deserves to be stated plainly, for Section 31(7) recalibrated the balance between the arbitrator's statutory power and the autonomy of the parties. This shift was lucidly explained by a two-Judge Bench of this Court in ***Pam Developments Private Limited*** v. ***State of West Bengal and Another***[12], where the Court surveyed the case law and held as follows. Under the 1940 Act, an arbitrator could imply a power to award interest where the contract was silent. Under the 1996 Act, however, the opening words of Section 31(7)(a), "unless otherwise agreed by the parties", expressly subordinate that power to the parties' bargain. An express bar in the agreement now suffices to exclude the power, even where the bar is not specifically addressed to the arbitrator's jurisdiction. This marks a clear departure from the strict-construction approach that prevailed under the 1940 Act. The propositions summarised in paragraph

[12] (2024) 10 SCC 715

23 of ***Pam Developments Private Limited*** (supra) bear reiteration:

> "**23.** The power of the arbitrator to grant pre-reference interest, pendente lite interest, and post-award interest under Section 31(7) of the Act is fairly well-settled. The judicial determinations also highlight the difference in the position of law under the Arbitration Act, 1940. The following propositions can be summarised from a survey of these cases:
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> **23.1.** Under the Arbitration Act, 1940, there was no specific provision that empowered an arbitrator to grant interest. However, through judicial pronouncements, this Court has affirmed the power of the arbitrator to grant pre-reference, pendente lite, and post-award interest on the rationale that a person who has been deprived of the use of money to which he is legitimately entitled has a right to be compensated for the same[13]. When the agreement does not prohibit the grant of interest and a party claims interest, it is presumed that interest is an implied term of the agreement, and therefore, the arbitrator has the power to decide the same[14].
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> **23.2.** Under the 1940 Act, this Court has adopted a strict construction of contractual clauses that prohibit the grant of interest and has held that the arbitrator has the power to award interest unless there is an express, specific provision that

[13] State of Orissa v. G.C. Roy, (1992) 1 SCC 508, para 43(i). Also see State of Orissa v. N.C. Budharaj, (2001) 2 SCC 721; Union of India v. Krafters Engg. & Leasing (P) Ltd., (2011) 7 SCC 279 : (2011) 3 SCC (Civ) 533.
[14] State of Orissa v. G.C. Roy, (1992) 1 SCC 508, paras 43 (iv) & 44.

excludes the jurisdiction of the arbitrator[15] from awarding interest for the dispute in question[16].

23.3. Under the 1996 Act, the power of the arbitrator to grant interest is governed by the statutory provision in Section 31(7). This provision has two parts. Under clause (*a*), the arbitrator can award interest for the period between the date of cause of action to the date of the award, *unless otherwise agreed by the parties*. Clause (*b*) provides that unless the award directs otherwise, the sum directed to be paid by an arbitral award shall carry interest @ 2% higher than the current rate of interest, from the date of the award to the date of payment.

23.4. The wording of Section 31(7)(*a*) marks a departure from the Arbitration Act, 1940 in two ways: *first*, it does not make an explicit distinction between pre-reference and pendente lite interest as both of them are provided for under this sub-section; *second*, it sanctifies party autonomy and restricts the power to grant pre-reference and pendente lite interest the moment the agreement bars payment of interest, even if it is not a specific bar against the arbitrator[17].

23.5. The power of the arbitrator to award pre-reference and pendente lite interest is not restricted when the agreement is silent on whether

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[15] Port of Calcutta v. Engineers-De-Space-Age, (1996) 1 SCC 516, paras 4 and 5; Madnani Construction Corpn. (P) Ltd. v. Union of India, (2010) 1 SCC 549 : (2010) 1 SCC (Civ) 168; Tehri Hydro Development Corpn. Ltd. v. Jai Prakash Associates Ltd., (2012) 12 SCC 10 : (2013) 2 SCC (Civ) 122, paras 18-20; Union of India v. Ambica Construction, (2016) 6 SCC 36 : (2016) 3 SCC (Civ) 36 (First Ambica Construction Case); Ambica Construction v. Union of India, (2017) 14 SCC 323 : (2018) 1 SCC (Civ) 257 (Second Ambica Construction Case); Raveechee & Co. v. Union of India, (2018) 7 SCC 664 : (2018) 3 SCC (Civ) 711; Reliance Cellulose Products Ltd. v. ONGC Ltd., (2018) 9 SCC 266 : (2018) 4 SCC (Civ) 351]

[16] State of U.P. v. Harish Chandra, (1999) 1 SCC 63.

[17] Sayeed Ahmed & Co. v. State of U.P., (2009) 12 SCC 26, paras 14, 23, 24 : (2009) 4 SCC (Civ) 629; Union of India v. Saraswat Trading Agency, (2009) 16 SCC 504 : (2011) 3 SCC (Civ) 499; Sree Kamatchi Amman Constructions v. Railways, (2010) 8 SCC 767, para 19 : (2010) 3 SCC (Civ) 575; Union of India v. Bright Power Projects (India) (P) Ltd., (2015) 9 SCC 695, para 13 : (2015) 4 SCC (Civ) 702; Reliance Cellulose Products Ltd. v. ONGC Ltd., (2018) 9 SCC 266, para 24 : (2018) 4 SCC (Civ) 351; Jaiprakash Associates Ltd. v. Tehri Hydro Development Corpn. (India) Ltd., (2019) 17 SCC 786, paras 13-15 : (2020) 3 SCC (Civ) 605; Delhi Airport Metro Express (P) Ltd. v. DMRC, (2022) 9 SCC 286, paras 16-20, 24 : (2022) 4 SCC (Civ) 623.

> interest can be awarded[18] or does not contain a specific term that prohibits the same[19].
>
> **23.6.** While pendente lite interest is a matter of procedural law, pre-reference interest is governed by substantive law[20]. Therefore, the grant of pre-reference interest cannot be sourced solely in Section 31(7)(*a*) (which is a procedural law), but must be based on an agreement between the parties (express or implied), statutory provision (such as Section 3 of the Interest Act, 1978), or proof of mercantile usage[21].

15. It is thus settled, and we reaffirm the position, that *pendente lite* interest stands on the footing of procedural law, and is governed by Section 31(7)(a). Interest for the pre-reference period stands on a different footing altogether: it is referable to substantive law and cannot be sourced in Section 31(7)(a) alone. Similar view was taken by another two-Judge Bench of this Court in ***G&T Beckfield Drilling Services*** (supra).

CLAUSE 54 OF THE GCC

16. Therefore, the issue whether the parties had agreed to prohibit the grant of interest would depend upon the terms laid down in the contract. Hence, the claim for grant of interest for pre-reference

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[18] Jaiprakash Associates Ltd. v. Tehri Hydro Development Corpn. (India) Ltd., (2019) 17 SCC 786, para 13.2 : (2020) 3 SCC (Civ) 605.

[19] Oriental Structural Engineers (P) Ltd. v. State of Kerala, (2021) 6 SCC 150, paras 15-18 : (2021) 3 SCC (Civ) 548.

[20] Central Bank of India v. Ravindra, (2002) 1 SCC 367, para 39 following State of Orissa v. G.C. Roy, (1992) 1 SCC 508, para 43(v).

[21] Central Bank of India v. Ravindra, (2002) 1 SCC 367, para 39; Central Coop. Bank Ltd. v. S. Kamalaveni Sundaram, (2011) 1 SCC 790, para 13 : (2011) 1 SCC (Civ) 331.

period turns upon interpretation of Clause 54 of the GCC which reads as under:

> **"54.0 <u>No Claim for Delayed Payment due to Dispute Etc.</u>**
>
> No claims for interest or damages will be entertained by the Corporation with respect to any money or balance which may be lying with the Corporation owing to any dispute, difference or misunderstanding between the Engineer-in-Charge on the one hand and contractor on the other or with respect to any delay on the part of the Engineer-in-Charge making periodical or final payments or in any other respect whatsoever."

<u>REASONS</u>

17. The issue is no longer *res integra*, clauses of materially similar tenor having received the considered attention of this Court on more than one occasion. What remains for determination is the narrower question of construction: whether Clause 54 corresponds to the clause considered in ***Harish Chandra*** (supra), as the High Court held, or to the clauses considered in ***Sayeed Ahmad*** (supra) and ***Jaiprakash Associates Limited v. Tehri Hydro Development Corporation (India) Limited (THDC-II)***[22] (supra). For ease of comparison, the material clauses are set out below in tabular form:

[22] (2019) 17 SCC 786.

Present Case	**Harish Chandra (1999) 1 SCC 63**	**Sayeed Ahmed – (2009) 12 SCC 26**	**THDC-II (2019) 17 SCC 786**
54. No claims for interest or damages will be entertained by the Corporation with respect to any money or balance which may be lying with the Corporation owing to any dispute, difference or misunderstanding between the Engineer-in-Charge on the one hand and contractor on the other or **with respect to any delay on the part of the Engineer-in-Charge** making periodical or final payments or in any other respect whatsoever. (emphasis supplied)	1.9 No claim for interest or damages will be entertained by the Government with respect to any moneys or balances, which may be lying with the Government owing to any dispute, difference; or misunderstanding between the Engineer-in-charge in making periodical or final payments or in any other respect whatsoever."	G 1.09 No claim for interest or damages will be entertained by the Government with respect to any money or balance which may be lying with the Government or any become due owing to any dispute, difference or misunderstanding between the Engineer-in-Charge on the one hand and the contractor on the other hand or with respect to any delay on the part of the Engineer-in-charge making periodical or final payment or any other respect whatsoever.	Clause 51.0 *No claim for delayed payment due to dispute, etc.* No claim for interest or damage will be entertained or be payable by the corporation in respect of any amount or balance which may be lying with the corporation owing to any dispute, difference or misunderstanding between the parties or in respect of any delay or omission on the part of the Engineer in charge in making intermediate or final payments or in any other respect whatsoever.

18. It is necessary, at this stage, to explain in plain terms why the clause in ***Harish Chandra*** (supra) and Clause 54 of the GCC, though they may look alike at first glance, say two different things. The clause considered in ***Harish Chandra*** (supra) said that no claim for interest or damages would be entertained with respect to money or balances lying with the Government because of a dispute, difference or misunderstanding between the Engineer-in-charge and the contractor in making periodical or final payments, or in any other respect whatsoever. Read as a whole and in the ordinary sense in which such sentences are read, the words "in making periodical or final payments" describe the situation in which the dispute or misunderstanding arose; they do not create a separate, free-standing ground of their own. In other words, the bar in that clause was addressed to one thing only, money held back because of a dispute. It said nothing, in terms, about money that was simply paid late, where there was no dispute or misunderstanding at all, only delay. That is exactly why the three-Judge Bench in ***Harish Chandra*** (supra) held that the clause did not stop the arbitrator from awarding interest generally, the closing words "or in any other respect whatsoever" were read as belonging to the same family as the dispute-related bar that came before them, and could not be used to block a claim for interest that arose purely from delay in payment, a situation the clause never actually addressed.

19. Clause 54 of the GCC is worded differently, and the difference matters. It bars claims for interest or damages in two separate situations, not one. The first is the same as before, money or balance lying with the Corporation owing to a dispute, difference or misunderstanding. But Clause 54 then adds, in its own right and joined by the word "or", a second, independent situation, "any delay on the part of the Engineer-in-Charge making periodical or final payments", before finally adding the same closing words, "or in any other respect whatsoever." This is not a small drafting difference. By naming delay in payment as a separate ground, standing on its own and not tied to any dispute, Clause 54 does what the clause in ***Harish Chandra*** (supra) never did: it expressly shuts out a claim for interest arising from delayed payment, whether or not there was any dispute about it at all. The very situation that fell outside the bar in ***Harish Chandra*** (supra), delay in payment, without more, is brought squarely inside the bar in Clause 54. That is the true and complete answer to the High Court's view that the two clauses say the same thing; they do not, and the difference is decisive.

20. This is also not a one-off or unusual way of drafting such a clause. The very same structure, a separate, additional line barring interest on delayed payments, over and above the bar on money withheld due to a dispute, appears in the clauses that this Court examined in ***Sayeed Ahmed*** (supra) and ***THDC-II*** (supra), and in each of those cases, for that very reason, this Court held that the clause was a complete bar on the arbitrator's power to award interest, whether for the pre-reference period or *pendente lite*. We respectfully agree with that reasoning and see no reason to depart from it. It follows that the High Court was in error in treating

Clause 54 as no different from the clause in ***Harish Chandra*** (supra). The two clauses are worded differently, and that difference in wording makes all the difference in law. It is the line of decisions in ***Sayeed Ahmed*** (supra) and thereafter, not ***Harish Chandra*** (supra), that governs this case.

21. For the foregoing reasons, the High Court, erred in holding that Clause 54 of the GCC is similar to the clause considered by this Court in ***Harish Chandra*** (supra).

22. The contention that the appellant waived its right to invoke Clause 54 by not urging it before the Arbitral Tribunal does not survive scrutiny of the record, which discloses that the plea was specifically taken in the pleadings filed before the Tribunal. The appellant took the said plea in the Statement of Defence filed on 23.08.2012 before the Arbitral Tribunal. Similarly, the contention of the intervenor is that Clause 54 of the GCC is similar to the clause considered by this Court in ***Harish Chandra*** (supra) is also *sans* merit.

<u>CONCLUSION</u>

23. For the foregoing reasons, we are of the considered view that Clause 54 of the GCC bars the grant of interest for the pre-reference period, and that the Arbitral Tribunal, in awarding such interest, exceeded the bounds of its jurisdiction under Section 31(7)(a) of the 1996 Act. The High Court erred in equating Clause 54 with the clause considered in ***Harish Chandra*** (supra), and in restoring the grant of pre-reference interest on that basis. The impugned judgment, to the extent it restores the grant of pre-reference interest, cannot be sustained and is accordingly set aside.

24. The appeal is allowed in the above terms. There shall be no order as to costs.

25. Pending application(s), if any, shall stand disposed of.

...J.
[PAMIDIGHANTAM SRI NARASIMHA]

...J.
[ALOK ARADHE]

NEW DELHI;
SEPTEMBER 22, 2026.