

An arbitrator being the creature of contract cannot award interest contrary to the terms of the agreement: Supreme Court

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Strap: An arbitrator in the arbitration proceedings being the creature of the contract has no power to award interest contrary to the terms of the agreement

Supreme Court in its decision delivered on November 18, held that, an Arbitrator cannot go beyond the specific bar contained under General Conditions of Contract for the payment of pendent lite or future interest on the amounts due and payable under the contract, while rendering the Arbitration Award. [*Union of India v. Manraj Enterprises, CIVIL APPEAL NO. 6592 of 2021*]

A Division Bench of Justice MR Shah and BV Nagarathna, while allowing the appeal, observed,

“Once the contractor agrees that he shall not be entitled to interest on the amounts payable under the contract, including the interest upon the earnest money and the security deposit as mentioned in clause 16(2) of the agreement/contract between the parties herein, the arbitrator in the arbitration proceedings being the creature of the contract has no power to award interest, contrary to the terms of the agreement/contract between the parties and contrary to clause 16(2) of the agreement/contract in question in this case.”

The Union of India preferred the given appeal against Delhi High Court judgment, wherein the award passed by Sole Arbitrator was upheld.

By Award dated 17.01.2011, an amount of Rs.7881553.08, along with pendent lite and future interest was granted against the appellants, on amount other than earnest money and security deposit.

ASG, Shri KM Nataraj, appearing for the union submitted that as per clause 16(2) of the General Conditions of Contract (for short, ‘GCC’) governing the contract, there was a bar against payment of interest. Reliance was placed on *Garg Builders v. Bharat Heavy Electricals*, 2021 SCC OnLine SC 855, where it was held that if the contract prohibits pre-reference and pendent lite interest, the arbitrator cannot award interest for the said period.

Shri Vikas Singh, appearing for the respondents, submitted that if the entire clause 16 of GCC is read, it is evident that it pertains specifically to earnest money and security deposits and the same can in no way be read in a manner to imply a bar on pendent lite interest or other amounts as contended on behalf of the Union of India.

Clause 16 of the GCC reads as under:

Earnest Money and Security Deposit

(1) The earnest money deposited by the Contractor with his tender will be retained by the Railway as part of security for the due and faithful fulfilment of the contract by the contractor. The balance to make up this security deposit which will be 10 per cent of the total value of the contract, unless otherwise specified in the special conditions, if any, may be deposited by the Contractor in case or in the form of Government Securities or may be recovered by percentage deduction from the Contractor’s “on account” bills provided also that in case of a defaulting

contractor the Railway may retain any amount due for payment to the contractor on spending 'on account bills', so that the amount or amounts so retained may not exceed 10% of the total value of the contract.

(2) No interest will be payable upon the earnest money or the security deposit or amounts payable to the Contractor under the Contract, but Government Securities deposited in terms of Sub-clause (1) of this Clause will be repayable with interest accrued thereon.