

**Do-It Computer JV v. The Municipal Corporation of Greater Mumbai (Bombay High Court, 5 June 2018)****BRIEF BACKGROUND**

The Respondent floated a tender on 'Build Own Operate' basis. The Appellant emerged as the successful bidder. Subsequently, a work order was executed between the parties. When disputes arose between the parties, the matter was referred to arbitration.

An award ("Award") was passed in favour of the Appellant. On the one hand, in paragraph 42 of the Award, the arbitrator had recorded that the Appellant was entitled to interest on the amount due and payable, on the other hand, while recording the operative portion at paragraph 45 of the Award, the arbitrator granted interest on the amounts under clauses (a) to (c) but did not grant interest on the amount under clause (d). Clause 45(d) read as follows:

*"(d) Declared that the Claimant is entitled for Rs. 286/- per MT (Metric Ton) with linear escalation of 5% every year on the amount of Rs. 260/- per MT on the actual transferred municipal solid waste or for a minimum of 600 MT per day, whichever is higher, and that the Respondent is liable to pay to the Claimant the said sum for the period commencing from 18.06.2009 till expiration of the contractual period, that is, 08.05.2017"*

When the Appellant filed to execute the Award, the Respondent filed an application requesting a substitution of an earlier bank guarantee of approximately Rs. 48 crores submitted to the Bombay High Court ("Court") with a fresh bank guarantee of approximately Rs. 36 crores calculated as per the Award.

The Appellant contended that if the Award was read as a whole, especially paragraphs 41 and 42 thereof, interest would necessarily be granted upon the awarded amount. Thus, the amount of Rs. 36 crores as stated by the Respondent was incorrect.

**ISSUES AND FINDINGS**

The issues which arose for the DB's consideration and the finding with respect to each of the issues are set out below:

The issue for the Court's consideration was whether the Appellant was entitled to interest on the amount awarded under clause 45(d) of the Award.

The Appellant submitted that as the arbitrator had made a broader observation about the Appellant being entitled to interest, such interest had to be granted on all amounts under the Award. Additionally, the Appellant contended that Section 31(7)(b)<sup>1</sup> of the Arbitration and Conciliation Act, 1996 ("Act") mandates grant of interest on award amount, unless the award otherwise directs. Thus, even though the arbitrator had not expressly granted interest on the amount under clause 45(d), by operation of Section 31(7)(b) of the Act, 18% interest should be granted on the said amount.

The Respondent contended that a court in execution proceedings is not permitted to go behind the decree, or to interpret clauses, or modify the award. It must execute what is placed before it. Furthermore, Respondent contended that the Appellant could have sought correction of the Award within 30 days of it being passed but did not do so.

The Court agreed with the Respondent's submissions. It noted that the Appellant had neither filed an application seeking correction of the Award nor sought to challenge the Award. Thus, for the foregoing reasons the Award became final. Thereafter, the Court proceeded to deal with the applicability of Section 31(7)(b). Despite noting that the arbitrator had not denied interest on the amount payable under clause 45(d) of the Award, the Court opined that from a reading of the Award it appeared that the arbitrator had consciously not granted interest on the amount payable under clause 45(d). Looking at the language of Section 31(7)(b) and the facts

<sup>1</sup> Section 31(7)(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."

of the case, the Court held that Section 31(7)(b) was not applicable.

## CONCLUSION

From the foregoing it appears that in situations where the arbitrator knowingly (and the award tacitly) refrains from granting interest, the mandatory provisions of Section 31(7)(b) of the Act directing interest on awarded sum may be excluded. Whether such situations are excluded because they are covered by the words ‘unless the award otherwise directs’ in Section 31(7)(b) remains unclear.

Given the foregoing situation, for the moment, it appears that the safest route for award holders is to seek a clarification / correction of an award within 30 days of the Award being passed.

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ECONOMIC  
LAWS  
PRACTICE  
ADVOCATES & SOLICITORS

MUMBAI

[mumbai@elp-in.com](mailto:mumbai@elp-in.com)

AHMEDABAD

[ahmedabad@elp-in.com](mailto:ahmedabad@elp-in.com)

NEW DELHI

[delhi@elp-in.com](mailto:delhi@elp-in.com)

PUNE

[pune@elp-in.com](mailto:pune@elp-in.com)

BENGALURU

[bengaluru@elp-in.com](mailto:bengaluru@elp-in.com)

CHENNAI

[chennai@elp-in.com](mailto:chennai@elp-in.com)

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