

Act”). It held that when the contract between the parties bars payment of pende lite interest, the arbitral tribunal would have no jurisdiction to grant the same.

Factual Background

2. Jaiprakash Associates Ltd. (“**Appellant**”) was awarded a works contract by Tehri Hydro Development Corporation India Ltd. (“**Respondent**”). The Contract contained an arbitration clause, providing for disputes to be referred to arbitration governed by the 1996 Act, before a three-member arbitral tribunal (“**Tribunal**”).
3. Under its arbitral award (“**Award**”), the Tribunal allowed certain claims of the Appellant and granted interest at 10% per annum on the same from the date of invocation of the arbitration till 60 days after the award². After such time period, ‘future interest’ at the rate of 18% per annum was granted till the date of payment.
4. The Respondent challenged the Award before a Single Judge of the Delhi High Court (“**High Court**”), contending that the Award was in contravention of Clauses 50³ and 51⁴ of the General Conditions of Contract (“**GCC**”), under which interest was not payable to the Appellant in respect of any payments. The Single Judge decided that in view of the categorical language of the said Clauses, the Tribunal was barred from awarding any interest to the Appellant. The Single Judge passed an order quashing the Award to the extent that it granted interest, and this order was challenged before a Division Bench of the High Court by the Appellant.
5. When the Division Bench upheld the order of the Single Judge, the aggrieved Appellant approached the Supreme Court.

Issues and Findings

6. The Supreme Court observed that though the Tribunal recognised that there was an apparent bar against granting interest under Clauses 50 and 51, it had nevertheless granted the same by relying on the judgment in *Board of Trustees for the Port of Calcutta v. Engineers-De-Space-Age*⁵. This case had recognised an arbitrator’s discretion to grant interest in the absence of an express prohibition under the contract between two parties. The Tribunal held that while a strict interpretation of the clauses precluded the Respondent from making interest payment to the Appellant for ‘delayed payment’, it did not curtail an arbitrator’s discretion to grant interest once disputes were referred to arbitration.
7. On the other hand, the High Court had noted that the Clauses in the present case were identical to the two clauses in *Tehri Hydro Development Corporation (THDC) Limited & Anr. v. Jai Prakash Associates Limited*⁶, which was a matter that arose between the same parties. The Supreme Court in that case had analysed the identical clauses and held that no interest would be payable on delayed payment due to the contractor.
8. The Appellant argued that the findings of the Supreme Court in the Tehri Hydro case were contrary to its earlier judgment in *State of Uttar Pradesh v. Harish Chandra and Company*⁷. The judgments in *Tehri Hydro* and *Harish*

² This part of the interest may be understood as “pendente lite” interest, which refers to interest for a period when the legal action is ongoing.

³ “**Clause 50.0 Interest on money due to the contractor**

No omission on the part of the Engineer in charge to pay the amount due upon measurement or otherwise shall vitiate or make void the contract, nor shall the contractor be entitled to interest upon any guarantee or payments in arrears nor upon any balance which may on the final settlement of his account, be due to him.”

⁴ “**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 on in any other respect whatsoever.”

⁵ (1996) 1 SCC 516, [“*Board of Trustees*”].

⁶ (2012) 12 SCC 10, [“*Tehri Hydro*”].

⁷ (1999) 1 SCC 63, [“*Harish Chandra*”].

Chandra both having been rendered by three-judge benches of the Supreme Court, the Appellant contended that, in the present case, the Supreme Court should either rely on the *Harish Chandra* case – as it was the earlier judgment – or refer the conflict to a larger bench.

9. However, the Supreme Court agreed with the contention of the Respondent that neither the *Board of Trustees* case, nor the *Harish Chandra* case would be applicable in the present scenario, as they had been decided under the 1940 Act. It adverted to the case of *Sayeed Ahmed and Co. v. State of Uttar Pradesh and Ors.*⁸, and observed that while the 1940 Act had been silent with respect to the jurisdiction of an arbitrator in granting *pendente lite* interest, section 31(7) of the 1996 Act categorically provides that the power of the arbitral tribunal to award *pendente lite* interest was subject to the agreement between the parties.
10. Based on the language of the clauses of the GCC, and *inter alia* relying on the above precedents, the Supreme Court found no reason to interfere with the judgment of the High Court and upheld the same.

ELP Comment

11. The Supreme Court in this case has given primacy to party autonomy in keeping with the spirit of the 1996 Act. However, it is pertinent to note that while section 31(7) of the 1996 Act gives parties the right to prohibit granting of interest for the period between date of cause of action arising till date of award, parties cannot bar granting of interest for a post-award period till date of payment. This distinction has been carved out to prevent the award-debtor from unduly delaying payment under the Award. In light of this express provision, the Respondent did not challenge the ‘future interest’ of 18% per annum awarded by the Tribunal in the present case.

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⁸ (2009) 12 SCC 26, [“*Sayeed Ahmed*”].