



Interest Clause in Invoices Cannot Be Ignored When Arbitration Clause Is Enforced: Delhi High Court

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When arbitral tribunals disregard clearly-agreed contractual terms, particularly those forming part of commercial documentation routinely relied upon in trade practice, the resulting award risks undermining both party autonomy and business certainty. The Hon'ble Delhi High Court, in its recent decision in "*Khushi Ram Rajiv Kumar & Co. versus M/s Naveen Enterprises & Others*", reaffirmed that arbitral adjudication must remain anchored in the terms of the contract and established mercantile usage. Setting aside the arbitral award and the order of the District Court to the extent they rejected the claim for contractual interest, the Court held that once the invoices/bijaks were accepted as binding instruments containing both the arbitration clause and the interest stipulation, the arbitrator could not selectively recognise one clause while ignoring the other. The Court observed that the non-consideration of the agreed interest clause, amounted to a violation of Section 28(3) of the Arbitration and Conciliation Act, 1996 which mandates regard to contractual terms and trade practice in the decision-making process.

In a reasoned pronouncement underscoring the doctrine of contractual fidelity in arbitral proceedings, the Hon'ble Court further emphasised that interest is not merely a punitive financial burden but a compensatory mechanism in commercial transactions, particularly where a party has been deprived of legitimate dues over time. Referring to Clause 2 of the note printed on the invoices, which expressly provided for interest at 1.75% per month, the Hon'ble Court held that the arbitrator's refusal to grant interest despite an explicit contractual stipulation was patently unsustainable. Reiterating that arbitral tribunals are empowered under Section 31(7) of the Arbitration and Conciliation Act, 1996 to award pre-award and post-award interest, the Court ruled that such power must be exercised in alignment with the parties' agreement rather than contrary to it. By restoring the Petitioner's entitlement to contractual interest, the decision reinforces the judiciary's commitment to upholding fairness, commercial discipline, and accountability in arbitral determinations, especially in cases arising out of long-standing trade relationships.

The present Appeal before the Hon'ble High Court was instituted under Section 37(b) of the Arbitration and Conciliation Act, 1996 by the Petitioner arising from proceedings before the District and Sessions Judge. The challenge was directed against the Order, dated 31.03.2016 by which the Petitioner's application under Section 34 of the Act had been rejected. The factual matrix emerging is such that the Petitioner is a registered partnership firm engaged in the business of commission agency in cloth and fabrics and is a bona fide member of the Delhi Hindustani Mercantile Association. The parties had been engaged in commercial dealings over several years, during which the Respondents regularly purchased cloth and fabrics from the petitioner on credit in the ordinary course of trade. The Petitioner maintained a running account in respect of these transactions and claimed that a sum of ₹1,92,483.46 remained outstanding as on 1 April 2011. In support of its claim, the Petitioner relied upon invoices/bijaks, statements of account and transport records, and further asserted that the terms and conditions governing the transactions — including the arbitration clause and the stipulation for interest on delayed payments — were printed on the reverse of the bills and were binding on the Respondents. Despite repeated oral demands, the dues allegedly remained unpaid, prompting the Petitioner to issue a letter dated 3 March 2012 followed by a legal notice dated 12 March 2012. Upon the Respondents' failure to

¹ 2025:DHC:11674



comply, the Petitioner invoked the arbitration clause under the rules of the Delhi Hindustani Mercantile Association, seeking recovery of the outstanding amount along with interest and costs.

During the arbitral proceedings, the Respondents failed to enter appearance despite service of notice and were, therefore, proceeded against *ex-parte*. The Arbitral Tribunal framed issues, *inter alia*, with respect to the existence of an arbitration agreement between the parties and the Petitioner's entitlement to recover the outstanding amount along with interest. Although the arbitrator concluded that a valid arbitration agreement was in place, the claim was ultimately dismissed by the award dated 31.03.2014, upon consideration of the statements of account and other documents produced by the Petitioner. Aggrieved by the outcome, the Petitioner preferred objections under Section 34 of the Arbitration and Conciliation Act, contending that the award was contrary to law and public policy, and asserting that the arbitrator had failed to take into account the contractual terms, mercantile usage, and documentary evidence on record, thereby acting in breach of Section 28(3) of the Act.

The District Court, by the impugned order, dismissed the Petitioner's objections on the ground that the challenges raised were, in essence, an invitation to re-appreciate the evidence and re-examine the factual findings returned by the arbitrator, a course of action impermissible within the narrow scope of interference contemplated under Section 34 of the Arbitration and Conciliation Act. The Court further observed that an erroneous interpretation of contractual terms or an alleged misappreciation of evidence would not, by itself, amount to patent illegality or conflict with the public policy of India, and that the arbitral award represented a plausible view based on the material available on record, thereby warranting no interference. Aggrieved by this decision, the Petitioner preferred the present Appeal. In the appellate proceedings, the Hon'ble High Court, by Order, dated 07.04.2025, directed that the matter be proceeded with *ex-parte* in view of the Respondents' continued non-appearance despite sufficient opportunity having been granted.

On behalf of the Appellant, learned senior counsel contended that both the arbitral award and the impugned order stood vitiated by patent illegality and were in breach of the mandate of Section 28(3) of the Arbitration and Conciliation Act, 1996, inasmuch as the arbitrator had failed to give effect to the contractual terms mutually agreed between the parties. Reliance was placed on the decision in "*ONGC versus Saw Pipes Limited*"², wherein the Supreme Court held that it is the primary duty of an arbitral tribunal to enforce the contract, and that an award rendered in contravention of its terms is liable to be set aside as being violative of Section 28(3) of the Act. In the present case, it was urged, the invoices/bijaks issued by the Petitioner contained printed terms stipulating the levy of interest in the event of delayed payment, in addition to the arbitration clause. Once the arbitrator had treated the arbitration clause printed on the invoices as a valid arbitration agreement, it was argued, he could not have ignored or disregarded the other contractual stipulations forming part of the very same document.

It was further submitted that the arbitrator's finding that the claim was essentially one for interest, and interest upon interest, was contrary to the record and overlooked well-settled principles governing commercial transactions. The Appellant contended that the claim was primarily for recovery of outstanding dues under unpaid invoices, and that the claim for interest arose merely as a contractual and compensatory consequence of delayed payment. Reliance was placed on the decision of the Hon'ble Supreme Court in "*Irrigation Department, Government of Orissa versus G.C. Roy*"³, wherein the Court recognized that a party deprived of the use of money to which it is legitimately entitled has a right to be compensated for such deprivation, and that interest constitutes a normal incident of commercial dealings unless expressly excluded by contract. It was also urged that even assuming, arguendo, that the contract was silent on certain aspects of

² (2003) 5 SCC 705

³ (1992) 1 SCC 508



interest computation, the arbitrator was not justified in rejecting the claim in toto, particularly when the Respondents had been proceeded against *ex-parte* and had not disputed the documentary evidence produced by the Petitioner. The alleged failure to properly appreciate the statements of account, sundry debtors' records and transport documents, which, it was argued, demonstrated the subsisting liability of the Respondents, was said to render the award arbitrary and perverse.

It was also contended that the District Court erred in declining to interfere with the award by mechanically treating the Petitioner's objections as a mere attempt to secure re-appreciation of evidence. The Appellant argued that the challenge squarely attracted the permissible grounds under Section 34(2) of the Arbitration and Conciliation Act, as elucidated by the Hon'ble Supreme Court in "*DDA versus R.S. Sharma and Co.*"⁴, which recognizes that an arbitral award may be set aside where it is contrary to substantive law, the provisions of the Arbitration and Conciliation Act, or the terms of the contract, or where it is patently illegal or shocks the conscience of the court. In the present case, however, it was submitted that the District Court failed to examine whether the award was in conflict with the fundamental policy of Indian law or was tainted by patent illegality arising from the arbitrator's disregard of contractual terms and established trade usage.

On a perusal of the record, the Court noted that the existence of commercial dealings between the parties that may be evidenced through invoices/bijaks issued by the Petitioner and the maintenance of a running account, was undisputed. The real controversy, however, centered on the Petitioner's entitlement to interest on delayed payments, in terms of the conditions printed on the invoices governing their transactions. The principal question before the Court was, therefore, whether the arbitrator and the District Court were justified in rejecting the claim for interest despite the presence of a contractual stipulation to that effect, and notwithstanding the statutory framework under the Arbitration and Conciliation Act permitting the award of interest. The Hon'ble Court observed that the interest clause present in the invoice clearly reflected a mutually agreed term relating to the levy of interest.

The Hon'ble Court held that once the invoices were accepted as binding contractual documents, the terms and conditions printed on them, including the clause governing levy of interest, could not be selectively ignored. Having relied on the clauses printed on the invoices to uphold the existence of a valid arbitration agreement, the Court held that the arbitrator, erred in disregarding the interest clause while adjudicating the claim for interest. Such an approach was found to be contrary to Section 28(3) of the Arbitration and Conciliation Act, which mandates due regard to contractual terms and trade usage. The Court further noted that the arbitrator's conclusion that the claim was merely one for excessive interest under the guise of unpaid invoices overlooked the express interest stipulation on the bills and the established course of commercial dealings between the parties. The reasoning that the clause did not specify the basis or manner of computation of interest was held to be unsustainable, as the rate had been contractually agreed and its mode of application flowed from recognized mercantile practice. The rejection of interest on the ground of supposed ambiguity was, therefore, unwarranted. Reiterating the principle affirmed in the judgment in *ONGC (supra)*, the Court emphasized that the primary duty of an arbitral tribunal is to enforce the contract between the parties, and that an award rendered in disregard of contractual terms is patently illegal and contrary to public policy. In any event, the Court noted, the Section 31(7)(a) of the Act itself empowers an arbitral tribunal to award interest for the period between the accrual of the cause of action and the date of the award, unless the parties have agreed otherwise.

⁴ (2008) 13 SCC 80



The Hon'ble High Court also placed its reliance on the decision in "*Interstate Construction versus National Projects Construction Corporation Limited*"⁵, wherein the Hon'ble Supreme Court reaffirmed that the power of an arbitral tribunal to grant pre-reference interest, pendente lite interest and post-award interest under Section 31(7) of the Arbitration and Conciliation Act is now well-settled. The judgment explains that Section 31(7) comprises two distinct components: under clause (a), the arbitrator may award interest for the period between the accrual of the cause of action and the date of the award, unless the parties have agreed otherwise; while clause (b) stipulates that, unless directed to the contrary, the sum awarded shall carry interest at a rate two per cent above the prevailing current rate from the date of the award until payment. Significantly, the Supreme Court observed that clause (a) does not differentiate between pre-reference and pendente lite interest, treating both within its ambit, and that it reinforces party autonomy by limiting the grant of such interest where the contract expressly bars it. However, where the agreement is silent or does not prohibit interest, the arbitrator's power remains intact. While pendente lite interest is rooted in procedural law, the award of pre-reference interest is governed by substantive law and must, therefore, find its source in an express or implied contractual term, a statutory provision such as Section 3 of the Interest Act, 1978, or established mercantile usage.

The Supreme Court in *Interstate Construction (supra)* clarified that Section 31(7) of the Arbitration and Conciliation Act empowers an arbitral tribunal to grant pre-award, pendente lite, and post-award interest. Clause (a) covers interest up to the date of the award, while clause (b) provides for interest on the awarded sum thereafter. Such interest compensates the claimant for financial deprivation and discourages delay in payment, with the "sum" comprising both principal and interest up to the date of the award, which then carries further interest until realisation.

In the present case, Clause 2 of the invoices expressly authorised levy of interest, leaving no occasion for the arbitrator to deny it. The refusal to grant interest despite a clear contractual stipulation was held to be erroneous, as interest is a normal component of commercial transactions where payment is delayed. The District Court, in treating the challenge as a mere reappraisal of evidence, failed to appreciate this legal position; consequently, the award was unsustainable to the extent it rejected the claim for interest.

In light of the above findings, the appeal stands allowed, and the judgment dated 31.03.2016 as well as the arbitral award dated 31.03.2014 were set aside to the extent that they rejected the petitioner's claim for interest. The Hon'ble Court held that the Petitioner was entitled to interest in terms of Clause 2 of the note printed on the invoices on the outstanding principal sum until the date of the arbitral award *i.e.*, 31.03.2014, and thereafter interest at 18% per annum until realization.

Therefore, it must be noted that this judgment by the Hon'ble Delhi High Court stands as a significant reaffirmation of the foundational principle that arbitral tribunals are bound to give full effect to the contractual bargain between parties, particularly in commercial transactions governed by standard trade documentation and established mercantile usage. By restoring the Petitioner's entitlement to contractual interest and setting aside the arbitral award to the contrary, the Court underscored that notions of fairness and equity in arbitration cannot override express contractual stipulations, nor can procedural limitations be used to insulate awards that disregard such terms. This ruling not only strengthens confidence in arbitral accountability but also reinforces the broader jurisprudential message that transparency, commercial discipline, and fidelity to contractual obligations remain central to the integrity of the arbitral process.

⁵ 2025 SCC OnLine SC 1127