

EFFECT OF INTEREST ON ARBITRATION AWARDS

The power of the Arbitral Tribunal to award interest has been given statutory recognition by the Arbitration and Conciliation Act, 1996. Section 31(7) of the said Act empowers the Arbitral Tribunal to award pre-suit, pendentelite and future interest. It is further stated by Section 31(7)(b) that the Arbitral Tribunal can award future interest @ 18% p.a.

Before the enactment of the above-said Legislation, the power of the Arbitrator to award interest was subject to divergent judgments from the Supreme Court. In Executive Engineer (Irrigation), Balimala v. Abhaduta Jena, (1988)1 SCC 418, it had been held that the Arbitrator had no power to award interest – whether pre-suit, pendentelite or future interest. This judgment was overturned in stages by the following judgments:

In Secretary, Irrigation Department, Government of Orissa v. G.C. Roy, AIR 1992 SC 732, it was held that the Arbitrator had the power to award pendentelite interest.

In Hindustan Construction Co. Ltd. v. State of Jammu and Kashmir, AIR 1992 SC 2192, the power of the Arbitrator to award future interest was recognized.

In Executive Engineer, Dhankanal Minor Irrigation Division, Orissa v. N.C. Budhiraj, (1999)9 SCC 514, the Arbitrator's power to award pre-suit interest was also restored.

As award of interest is seen as compensation for deprivation of money lawfully due and payable to a person, courts in India have upheld award of

high rates of interest. In a number of reported cases, award of 18% interest has been held to be reasonable [Kindly see 1995(1) Arb LR 306 (SC); AIR 1982 Delhi 332 (DB); 2001(1) Arb LR 105 (Bom); 2001(1) RAJ 571 (Del); 2001(3) RAJ 545 (Del); 2003(1) Arb LR 157 (SC)].

The rate of interest awarded by an Arbitrator cannot be challenged in any Court of law – See AIR 1994 Madras 217; 2003(3) Arb LR 570 (SC); and (1997)9 SCC 252.

Courts in India have also held that an Arbitrator can award compound interest [1994(2) Arb LR 405(SC); 1993(3) Pun LR 1; AIR 1936 Rangoon 141]. It has also been held that interest awarded on certain claims can become a part of the principal, and the entire amount would then carry interest [See ONGC v. M.C. Clelland Engineers, SA, AIR 1999 SC 1614].

Where a particular rate of interest is mentioned in the agreement, i.e. the rate at which the employer gives advances to the contractor, it has been held that it was the agreed rate of interest between the parties and the Arbitrators were empowered to award the same rate of interest – (2000)6 SCC 519.

The following cases demonstrate how huge delays in the adjudication process increase the liability of a party by way of interest:

RSEB v. Narmada Industries, 1995(1) Arb LR 306 (SC)

Principal Amount	:	Rs. 4,56,741/-
Interest payable from (at varying rates)	:	13.1.1981
Date of judgment	:	24.9.1994

Assuming that payment was made on
the said date, interest payable : Rs. 10,69,047/-

ONGC Ltd. v. M.C. Celland Engineers, SA, (1999)4 SCC 327

Principal Amount : \$ 412,701/-
Interest payable from (at varying rates) : 5.11.84
Date of judgment : 23.4.1999
Assuming that payment was made on
the said date, interest payable : \$ 709,363/-

Suresh Kumar Jain v. DDA, 2003(1) Arb LR 157 (SC)

Principal Amount : Rs. 3,37,732/-
Interest payable from (at varying rates) : 25.3.1991
Date of final judgment : 14.2.2002
Assuming that payment was made on
the said date, interest payable : Rs. 4,15,410/-

Hindustan Construction Co. v. TNEB, 2005(1) Arb LR 41 (Mad)(DB)

Principal Amount : Rs. 1,00,09,105/-
Interest payable from (at varying rates) : 22.11.1989
Date of judgment : 4.8.2004
Assuming that payment was made on
the said date, interest payable : Rs. 1,61,84,722

Union of India v. Roshni Devi, 2005(1) Arb LR 363 (J&K)

Principal Amount	:	Rs. 24,44,500/-
Interest payable from (at varying rates)	:	24.7.1991
Date of judgment	:	1.12.1999
Assuming that payment was made on the said date, interest payable	:	Rs. 30,55,625/-

M.L. Mahajan v. DDA, 2005(1) Arb LR 561 (Del)

Principal Amount	:	Rs. 3,43,799/-
Interest payable from (at varying rates)	:	18.12.1986
Date of judgment	:	4.4.2005
Assuming that payment was made on the said date, interest payable	:	Rs. 7,52,358/-

Bhagwati Oxygen v. Hindustan Copper Ltd., (2005)6 SCC 462

Principal Amount	:	Rs. 74,84,521/-
Interest payable from (at varying rates)	:	August 1993
Date of judgment	:	5.4.2005
Assuming that payment was made on the said date, interest payable	:	Rs. 1,57,17,494/-

Delhi Jal Board v. Subhash Pipes Ltd, 2005(2) Arb LR 213 (Del)

Principal Amount	:	Rs. 34,91,313/-
Interest payable from (at varying rates)	:	1.4.96 & 12.4.02
Date of judgment	:	15.2.2005

Assuming that payment was made on
the said date, interest payable : Rs. 48,00,724/-

ONGC Ltd. v. Garware Shipping Corp. Ltd., 2005(2) Arb LR 279
(Bom)

Principal Amount : Rs. 4,66,15,828/-
Interest payable from (@ 9% p.a.) : 5.2.2002
Date of judgment : 7.12.2004
Assuming that payment was made on
the said date, interest payable : Rs. 1,19,15,006/-

Mohd. Ummar Nizami v. State, 2005(2) Arb LR 295 (J&K)

Principal Amount : Rs. 10,86,072/-
Interest payable from (at varying rates) : April 1983
Date of judgment : 19.5.2004
Assuming that payment was made on
the said date, interest payable : Rs. 27,47,762/-

The above compilation is only illustrative and the cases have been picked up at random. However, each one of the above illustrates the fact that delay in resolution of disputes compounds considerably the amount which ultimately has to be paid by the party against whom the award is passed.