

## Pre-Award and Post-Award Interest under the Arbitration and Conciliation Act, 1996: Contract or Statutory Mandate?

The statutory framework governing the award of interest under the Arbitration and Conciliation Act, 1996 (“**Arbitration Act**”) is contained in Section 28(3) and Section 31(7) of the Arbitration Act. Section 28(3) of the Arbitration Act mandates that the arbitral tribunal shall, while deciding and making an award, take into account the terms of the contract and trade usages applicable to the transaction. Section 31(7)(a) of the Arbitration Act provides that, unless otherwise agreed by the parties, where and in so far as an arbitral award is for the payment of money, the arbitral tribunal may include in the sum for which the award is made interest, at such rate as it deems reasonable, for the whole or any part of the period between the date on which the cause of action arose and the date on which the award is made. Section 31(7)(b) further provides that a sum directed to be paid by an arbitral award shall, unless the award otherwise directs, carry interest at the rate of 2% higher than the current rate of interest from the date of the award to the date of payment. On a perusal of Section 28(3) and Section 31(7) (a), it is clear that the statutory scheme under the Arbitration Act subordinates the discretion of the arbitral tribunal to the contractual provisions governing pre-award interest while post-award interest is governed by the statutory framework.

### Contractual Bar on Pre-Award Interest

Section 31(7)(a), by using the expression “*unless otherwise agreed by the parties*”, specifies that the arbitrator is bound by the terms of the contract insofar as the award of interest from the date of cause of action to the date of the award is concerned. Therefore, where the parties have agreed that no interest shall be payable, the arbitral tribunal cannot award pre-award/pendente lite interest.

In *Union of India v. Bright Power Projects (India) (P) Ltd.*, (2015) 9 SCC 695, it was held that where the parties had agreed that no interest shall be payable, the arbitral tribunal cannot award interest. Similarly, in *Sree Kamatchi Amman Constructions v. Railway Administration*, (2010) 8 SCC 767, it was held that the arbitral tribunal cannot award interest between the date when the cause of action arose to the date of award where the parties had agreed that no interest shall be payable.

The width and scope of interest-barring clauses have also been clarified. In *Union of India v. Manraj Enterprises*, (2022) 2 SCC 331, the Supreme Court rejected the application of the doctrine of *ejusdem generis* to narrow the meaning of the phrase “*amounts payable to the contractor under the contract*,” holding that such expression cannot be read in conjunction with “*earnest money deposit*” or “*security deposit*.” It was held that the expression has to be read independently and disjunctively, as the word used is “*or*” and not “*and*”. A similar approach was adopted in *BHEL v. Globe Hi-Fabs Ltd.*, (2015) 5 SCC 718 wherein it was held that the words “*any amount due to the contractor by the employer*” cannot be read as *ejusdem generis* along with the earlier words “*earnest money*” or “*security deposit*”.

In *Garg Builders v. BHEL*, (2022) 11 SCC 697, the Supreme Court observed that the provisions of the Arbitration Act give paramount importance to the contract entered into between the parties and categorically restrict the power of an arbitrator to award pre-reference and pendente lite interest when the parties themselves have agreed to the contrary. It was further observed that if the contract prohibits pre-reference and pendente lite interest, the arbitrator cannot award interest for the said period. In the same



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manner, in *Sayeed Ahmed & Co. v. State of U.P.*, (2009) 12 SCC 26, the Supreme Court held that if the contract bars payment of interest, the arbitrator cannot award interest from the date of cause of action till the date of the award. Similarly, in *Chittaranjan Maity v. Union of India*, (2017) 9 SCC 611, the Supreme Court held that if a contract prohibits award of interest for the pre-award period, the arbitrator cannot award interest for the said period.

The position has been recently reaffirmed in *Union of India & Ors. v. Larsen & Toubro Limited*, 2026 INSC 203, wherein it was held that the provisions of the Arbitration Act restrict the power of the arbitral tribunal to award pre-award/pendente lite interest when the parties have agreed to the contrary, and that such interest cannot be awarded even in the form of compensation.

It is clear that where the contract prohibits payment of interest, the arbitral tribunal cannot award such interest by treating it as compensation or by including it within the awarded amount. Section 28(3) read with Section 31(7)(a) requires the arbitral tribunal to act in accordance with the terms of the contract, and any such award would be contrary to the statutory scheme of the Arbitration Act.

### Post-Award Interest under the Arbitration Act

Section 31(7) of the Arbitration Act creates a distinction between interest payable before and after the award. While Section 31(7)(a)

of the Arbitration Act provides that the grant of interest for the period between the date on which the cause of action arose and the date of the award is subject to the agreement between the parties, Section 31(7)(b) of the Arbitration Act deals with interest for the post-award period. In terms of Section 31(7)(b) of the Arbitration Act, a sum directed to be paid by an arbitral award shall carry interest from the date of the award to the date of payment, and the expression “*unless the award otherwise directs*” relates to the rate of interest.

In this context, in *RP Garg vs. Chief General Manager, Telecom Department & Ors.*, 2024 SCC OnLine SC 2928, it was held that Section 31(7)(b) provides that a sum directed to be paid by the arbitral tribunal shall carry interest, and that while the rate of interest may be determined by the arbitrator, in default the statutory prescription will apply. It was further held that Section 31(7)(b) is in contrast with Section 31(7)(a) and is not subject to party autonomy, and that the expression “*unless the award otherwise directs*” relates to the rate of interest and not to the entitlement to interest. The assumption that payment of

post-award interest is subject to the contract is erroneous.

Similarly, in *Morgan Securities & Credits (P) Ltd. v. Videocon Industries Ltd.*, (2023) 1 SCC 602, the Supreme Court held that while Section 31(7)(a) is qualified by the agreement between the parties, Section 31(7)(b) is qualified by the arbitral award and the expression “*unless the award otherwise directs*” in Section 31(7)(b) occurs after the words “*a sum directed to be paid by an arbitral award shall*” and therefore qualifies only the rate of post-award interest. It was further observed that Section 31(7)(b) contemplates a situation where the arbitral award is silent on post-award interest in which event the award-holder would be entitled to post-award interest at the statutorily prescribed rate.

Further, in *Gayatri Balasamy v. ISG Novasoft Technologies Ltd.*, (2025) 7 SCC 1, the Supreme Court held that courts may increase or decrease the rate of post-award interest where compelling reasons exist and when the statute itself benchmarks a standard, such benchmark must weigh in the consideration of the rate awarded and that the power of modification is necessary to avoid unnecessary setting aside of the entire award

merely on the question of interest.

Hence, Section 31(7)(b) of the Arbitration Act governs the award of post-award interest and operates independently of the contract between the parties. While the arbitral tribunal may determine the rate of interest, the entitlement to such interest arises under the statute. The courts may, however, modify the rate of post-award interest where the facts so justify.

#### Conclusion

From a conspectus of the aforesaid discussion, it may be concluded that the jurisprudence under the Arbitration Act establishes a clear distinction governing the award of interest. Pre-award/pendente lite interest is subject to the terms of the contract and any bar therein is binding on the arbitral tribunal. In contrast, post-award interest is not subject to the contract between the parties. While the arbitral tribunal may determine the rate of such interest, the entitlement arises under the statute. This distinction preserves the primacy of the contract in relation to pre-award interest while ensuring that arbitral awards remain enforceable in accordance with the statutory framework.



# The Law of Law School

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### Engage, Don't Hide

Your professor can see you. You might think you can hide in a large 1L classroom. You might think you can avoid being judged. But you cannot. Professors are watching you, your reaction, your eyes. They can see you yawn, smile at an email, or try to avoid answering a question. They can see whether you choose to engage or hide.

Teachers see everything and

evaluate accordingly. If you step back and think about what teachers are doing in class, all they are doing is talking and watching. It is not hard to do both, so be warned that what you think is a sly look about a funny message is completely registered by the professor teaching the class.

A law professor sees two types of students in class.

One type of student actively listens, makes eye contact, asks questions, writes down the important points, and processes the material. The other type of student sits facing a computer, half processing, head down, avoiding the conversation and the learning process. Whether you like it or not, you are being judged, so be the active learner, not the passive avoider.