

Construction Arbitration Newsletter

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Construction Arbitration Law Firm

- **Claim for interest - power of arbitral tribunal to grant interest - pendente lite interest of 15% - interpretation of contractual clauses barring payment of interest - clause 22 of the contract prohibited the Contractor from claiming interest at 'any time' - whether the contractual bar prohibited the arbitral tribunal from granting pendente lite interest - expression "unless otherwise agreed by parties" in section 31(7)(a) of the 1996 Act would mean and in case the contract bars claim of interest, the Contractor cannot claim interest - power of the arbitral tribunal would depend on the stipulation in the contract in each case whether the power to grant pendente lite interest is expressly taken away - a bar on award of interest for delayed payment would not be readily inferred as an express bar to the award of pendente lite interest by the arbitral tribunal.**
- **Determinable contract - Specific Relief Act - under section 20A and 41(ha) of the Act, an injunction cannot be granted if it would impede or delay the progress or completion of any infrastructure project or interfere with the continued provisions of relevant facility related thereto or services being subject matter of such project - mere construction is not of paramount concern but the project is also required to be maintained through regular activities which are ongoing works.**

[National Highways Authority of India v. HK Toll Road Pvt. Ltd. - Delhi High Court - Decided on 17.4.2025]

[Ferro Concrete Construction (India) Pvt. Ltd. v. State of Rajasthan - Supreme Court - Decided on 2.4.2025]



Disputes between the parties were referred to arbitration. The arbitral tribunal allowed the claims of the Contractor and directed payment of 15% interest per annum on all dues payable from the date when the arbitral tribunal entered reference till payment or the date of decree, whichever was earlier. The lower Court set aside the interest awarded by the arbitral tribunal, and instead granted 9% simple interest on the principal sum from that date till the date of payment. It was held that the arbitral tribunal failed to consider that clause 22 of the contract, which was widely worded, prohibited the Contractor from claiming interest at any time. The Employer contended that each contractual clause barring payment of interest must be interpreted by the words used therein. The Court observed that under the Arbitration and Conciliation Act, 1996 interest is not payable if the contract provides otherwise. However, under the Arbitration Act, 1940 a strict construction of contractual clauses must be given that prohibit the grant of interest and it has been held that the arbitral tribunal has the power to award interest unless there is an express, specific provision that excludes the jurisdiction of the arbitral tribunal. While pendente lite interest is a matter of procedural law, pre-reference interest is governed by substantive law. Therefore, the grant of pre-reference interest cannot be sourced solely in Section 31(7)(a) (which is a procedural law), but must be based on an agreement between the parties (express or implied), statutory provision or proof of mercantile usage. The expression “unless otherwise agreed by parties” in section 31(7)(a) of the 1996 Act would mean and in case contract bars claim of interest, the Contractor cannot claim interest. The provision of section 31(7)(a) of the 1996 Act is binding upon the arbitral tribunal. If the contract expressly bars the award of interest pendente lite, the same cannot be awarded by the arbitral tribunal. Further, a bar on award of interest for delayed payment would not be readily inferred as an express bar to the award of pendente lite interest by the arbitral tribunal. The Court concluded that clause 22 prohibited the Contractor from claiming interest on ‘any payment, arrears or balance’, which may be found due to him ‘at any time’. The said clause does not expressly bar the award of pendente lite interest in the event of disputes, differences, or misunderstandings between the parties, or on delayed payment, or in any other respect whatsoever. The Court observed that it has not readily inferred a bar on the arbitral tribunal from clauses that merely bar the Contractor from claiming interest.



**National Highways Authority of India v. HK Toll Road Pvt. Ltd. -
Delhi High Court - Decided on 17.4.2025**

The Employer and the Concessionaire entered into a Concession Agreement for construction, operation and maintenance of the existing road on Hosur-Krishnagiri Section of NH-7 from Km 33.130 to Km 93.00 (length - Km 59.87) in the State of Tamil Nadu by Six-Laning thereof on design, build, finance, operate and transfer basis. The Concessionaire was granted the exclusive right and license by the Employer to operate the project highway and demand, collect toll fee for twenty four years. The Employer issued cure period notice directing the Concessionaire to rectify deficiencies and fulfil the operation and maintenance obligations. Thereafter, the Employer issued a notice of intention to terminate the agreement. The disputes between the parties were referred to arbitration. The Employer, terminated the contract by issuing a notice for termination to the Concessionaire and took over the project highway. The Concessionaire filed its statement of claim and sought interim measures from the arbitral tribunal against termination. The arbitral tribunal concluded that the Specific Relief Act was not attracted to the present case. The Court observed that if a contract can be terminated by either of the parties whether for a specific breach or even without any cause and this right is based on an allegation of beach or happening of an event which is clearly stated in the contract, then the contract is determinable in nature and hence, cannot be enforced. Once a contract is held to be determinable in nature, injunction cannot be granted. Only remedy available to the aggrieved party is to seek compensation for wrongful termination and it cannot claim specific performance of the agreement. Even if the termination of the agreement is found to be illegal, the only remedy available to the Concessionaire is to seek compensation.



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