

Construction Arbitration Newsletter

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Construction Arbitration Law Firm

- **Award of pendente lite interest - power of an arbitral tribunal to award pre-reference and pendente lite (interim) interest under section 31(7)(a) of the Arbitration and Conciliation Act, 1996 is subject to the agreement between the parties - if the agreement stipulates that no interest is payable, the arbitral tribunal cannot award it for the said period - power of an arbitral tribunal to award pendente lite interest can only be denuded if the agreement is worded to explicitly or by necessary implication bar such interest.**
- **Clause barring interest on "any delayed payment/disputed claim" - not sufficient to infer an express bar to award pendente lite interest by the arbitral tribunal - such clause does not limit the statutory power of the arbitral tribunal unless it uses comprehensive phrasing like "in any respect whatsoever".**
- **Rate of interest - awarded rate of 12% per annum is deemed reasonable, being lower than the statutorily prescribed rate (18%) prevalent under Section 31(7)(b) prior to the 2015 amendment.**
- **Post award interest - power to award post-award interest under section 31(7)(b) of the 1996 Act is statutorily governed and is not subject to the agreement between the parties - parties cannot contract out of post-award interest.**
- **Waiver of interest - a clause in a contract waiving interest is not ultra vires in terms of section 28 of the Indian Contract Act, 1872.**

[Oil and Natural Gas Corporation Ltd. v. G & T Beckfield Drilling Services Pvt. Ltd. - Supreme Court - Decided on 2.9.2025]



- Award of compensation for delays caused based on Chartered Accountant certificates - unauthenticated Chartered Accountant certificates with no supporting documents - certificates claimed to be based on the “audited books of accounts”, “contract ledger” and “related documents in respect of the contract” entered into between the parties - Chartered Accountant certificates not supported by examination of its author or production of the underlying records, has no probative value - Chartered Accountant merely verifies figures prepared by others and cannot authenticate the correctness of the transactions recorded.
- Claim for loss of profit - claims for loss of profit or idling charges must be supported by credible evidence showing (i) delay not attributable to claimant, (ii) potential for alternative work, and (iii) financial proof of loss - formula based or unsupported estimations cannot sustain such claims.

[Delhi Transco Ltd. v. KEC International Ltd. - Delhi High Court - Decided on 21.5.2025]



**Oil and Natural Gas Corporation Ltd. v. G & T Beckfield Drilling Services Pvt. Ltd. -
Supreme Court - Decided on 2.9.2025**

The Employer challenged the arbitral award on the ground of 12% interest on claims awarded to the Contractor by the arbitral tribunal. The Employer contended that the contract between the parties and section 31(7)(a) of the Arbitration and Conciliation Act, 1996 (1996 Act) provides that power of arbitral tribunal to award interest for the period between the date the cause of action arose up to the date of the award, which is subject to the agreement between the parties, therefore, in view of provision in the contract no interest could have been awarded. The arbitral tribunal had awarded interest on pre-reference period. It awarded interest not from the date the cause of action arose, but from the date the claim was affirmed before the arbitral tribunal. The Court was of the view that if the agreement is silent on award of interest, the arbitral tribunal can award interest in terms of clause (a) of sub-section (7) of section 31. The arbitral tribunal has jurisdiction to award interest for three distinct periods, namely, pre-reference, pendente lite, and future i.e., post-award. Award of pre-reference and pendente-lite interest is subject to the agreement between the parties whereas post award interest is statutorily governed and is not subject to the agreement between the parties. Clause providing “no interest shall be payable by ONGC on any delayed payment/disputed claim”. The arbitral tribunal can be denuded of its power to award pendente lite interest only if the contract between the parties is so worded that the award of pendente lite interest is either explicitly or by necessary implication. A clause merely barring award of interest on delayed payment will not be readily inferred as a bar to award pendente-lite interest by the arbitral tribunal. The clause merely says that there would be no interest payable by the Employer on any delayed payment/disputed claim. Neither it bars the arbitral tribunal from awarding pendente lite interest nor it says that interest would not be payable in any respect whatsoever. The Court upheld the arbitral award since post-award interest was in consonance with section 31(7)(b) of the 1996 Act.



The Employer awarded a contract to the Contractor for construction of a 400 kV transmission line. During the execution, the project suffered delays which the Contractor attributed to the Employer. The Contractor claimed compensation for idling of manpower, machinery, and other overheads due to these delays. The disputes between the parties were referred to arbitration. The Court set aside those portions of the award and the Single Judge's order that relied on the Chartered Accountant's (CA) Certificate i.e., the claims for idling and interest thereon. The Court observed that where the arbitral tribunal accepted Chartered Accountant's Certificates as the sole basis for quantifying contractor's claims for idling charges and interest, without examining the author of such certificates or the supporting books of accounts, ledgers or documents, such certificates constituted no evidence. A Chartered Accountant's certificate merely verifies numerical figures and does not prove the correctness of the underlying transactions. In absence of examination of the author or production of original records, such certificates have no probative value and cannot be relied upon as evidence before an arbitral tribunal. The arbitral tribunal's blind reliance on unauthenticated CA Certificates, without corroboration, was held perverse and patently illegal. Findings based solely on such unproved documents are unsustainable. The arbitral award, and the Single Judge's order upholding it, were set aside to the extent based on such certificates. For sustaining a claim for loss of profit or idling charges, the Contractor must prove that the delay was not attributable to it; possibility of alternative profitable work; and credible evidence of financial loss. Mere reliance on Hudson's formula or unsupported CA Certificates does not meet this evidentiary threshold. Where the principal sum is disallowed for want of evidence, interest awarded thereon must also be set aside.



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