

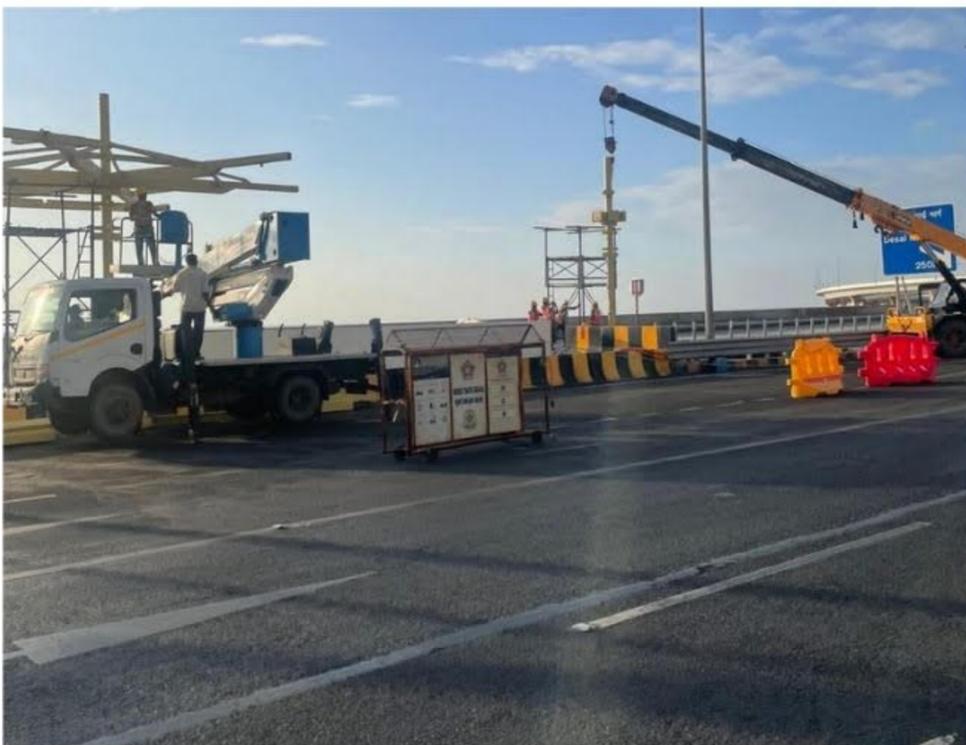
Construction Arbitration Newsletter

RAUTRAY & CO.

Construction Arbitration Law Firm

- **Award of interest - power of arbitral tribunal - periods for which interest may be awarded - distinction between pre-reference, pendente lite, and post-award interest - section 31(7)(a) of the Arbitration Act 1996 authorises an arbitral tribunal to award interest at a reasonable rate for the whole or any part of the period between the date on which the cause of action arose and the date of the award - this period includes both pre-reference and pendente lite periods - there is no statutory bar on the arbitral tribunal subdividing this composite period or prescribing different rates of interest for its sub-periods.**
- **Award of compound interest - interest on interest - meaning of “sum” under section 31(7) (b) of the Arbitration Act 1996 - the term “sum” in section 31(7)(b) includes the principal amount plus the interest awarded from the date of cause of action up to the date of the award - arbitral tribunal is competent to award post-award interest on such cumulative sum, i.e. on the principal together with pre-award interest.**
- **Meaning of phrase “period between the date on which the cause of action arose and the date on which the award is made” in section 31(7)(a) of the Arbitration Act 1996 - the phrase encompasses both the pre-reference and the pendente lite stages.**

[Interstate Construction v. National Projects Construction Corporation Ltd. - Supreme Court - Decided on 15.5.2025]



- **Claim for Loss of Profit - Contractor failed to demonstrate expected completion capability given extremely poor progress - it would be speculative to assume that the Contractor could have completed the work within the remaining period of the contract.**
- **Forfeiture of earnest money - validity - failure to furnish performance security under the contract justified annulment of the award of the contract and forfeiture of the earnest money deposit - while forfeiture of any stipulated sum may, in certain circumstances, attract section 74 of the Contract Act, the forfeiture of earnest money stands on a distinct footing and is not per se penal in nature - enforceability of such a clause depends on the terms of the contract and the nature of the breach - forfeiture of earnest money is not penal in the ordinary sense so as to attract the rigours of section 74 of the Contract Act - forfeiture of a performance guarantee cannot be resorted to in a mechanical manner, and the same has to be predicated on “actual loss” being suffered by the beneficiary on account of breach - since even the risk and cost Contractor could not complete the residual work within the stipulated period, no actual loss could be attributed so as to justify a risk and cost claim - forfeiture of the performance security, without any finding of actual loss is unsustainable.**
- **Claim for interest - meaning of “unless the award otherwise directs” in section 31(7)(b) of the Arbitration Act - relates to rate of interest and not entitlement of interest - grant of post award interest in mandatory under section 31(7)(b) - arbitral tribunal erred in not granting post-award interest in respect of the amount awarded - in the absence of grant of post award interest in the award, the court also possesses the power to grant post award interest.**

*[Uppal Engineering Company Pvt. Ltd. v. Ircon International Ltd. - Delhi High Court -
Decided on 17.10.2025]*



**Interstate Construction v. National Projects Construction Corporation Ltd. -
Supreme Court - Decided on 15.5.2025**

The Employer awarded to the Contractor the work for execution of civil works at the Ramagundam Super Thermal Power Project, Karimnagar. Certain recoveries were made by the Employer from the Contractor's bills, which the Contractor disputed, while also raising additional claims for unpaid dues and interest. The disputes between the parties were referred to arbitration. The Court observed that the Division Bench of the High Court erred in holding that the arbitral tribunal could not grant separate interest for pre-reference and pendente lite periods and that only two periods i.e. pre-award and post-award, were permissible under section 31(7) of the Arbitration Act, 1996. The phrase "period between the date on which the cause of action arose and the date on which the award is made" in section 31(7)(a) encompasses both the pre-reference and the pendente lite stages. The arbitral tribunal has the discretion to award interest for the whole or any part of that composite period and may prescribe different rates for its sub-periods or exclude portions of time where the claimant was found remiss. The term "sum" in section 31(7)(b) includes the principal amount plus the interest awarded from the date of cause of action up to the date of the award. Consequently, the arbitral tribunal is competent to award post-award interest on such cumulative sum, i.e., on the principal together with pre-award interest. The High Court's finding that this amounted to impermissible "compound interest" was erroneous. Post-award interest can be granted on the entire "sum" which includes pre-award interest. It is also permissible to award varying rates for different sub-periods within the pre-award phase. The Supreme Court set aside the Delhi High Court's judgment holding that the arbitral tribunal had acted within its powers in awarding interest for pre-reference, pendente lite, and post-award periods, and in treating pre-award interest as part of the "sum" for post-award interest computation.



The Employer invited tenders for construction of RCC Box Culverts and CC Roads for the Rail Coach Factory at Lalganj. The Contractor failed to furnish the mandatory 5% performance security due within 28 days of letter of acceptance, resulting in non-execution of the formal contract agreement. During execution, the Contractor's progress remained very slow. The Employer alleged inadequate deployment of manpower and resources, and repeated failure to comply with contractual obligations. The Contractor, on the other hand, claimed delay in handing over site, late drawings, and changes issued by the Employer. The Employer terminated the contract. Disputes between the parties were referred to arbitration. The Contractor raised claims towards various heads including release of earnest money deposit, loss of profit, and interest. The Employer filed counterclaims including forfeiture of performance security and risk and cost recovery. The arbitral tribunal partly allowed the Contractor's claim (for work executed), rejected claims for earnest money deposit, loss of profit, and interest, and allowed recovery of performance security in favour of the Employer. The Court upheld the arbitral tribunal's findings on termination, forfeiture of earnest money deposit, and rejection of loss of profit; granted post-award interest; and set aside forfeiture of performance security for lack of proof of actual loss, directing re-computation accordingly.



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