

HOW TO DETERMINE “REASONABLE” RATE OF INTEREST FOR INTEREST CLAIM IN ARBITRATION MATTERS?

Amit Bansal, Shruti Gupta, Surabhi Dubey and Shaurya Gupta*

I. BACKGROUND

The process of arbitration in India has evolved over the years and in today’s time it has become quite synonymous with dispute resolution for commercial contracts. With the increase in commercial disputes, the arbitration process has gained importance for faster resolution of issues. In any typical commercial arbitration, damages are claimed as a compensation by the affected party to reclaim/reinstate their position that existed before the dispute situation arose. These damages or claims may arise from varied dispute situations and may relate to:

- i. return on money invested by the affected party in a shareholder or joint venture dispute;
- ii. breach of contract in a commercial dispute (including pre-mature terminations and/or unforeseen suspensions);
- iii. additional costs incurred in an infrastructure or construction claim related disputes;
- iv. loss of future profits;
- v. loss of opportunity; etc.

It is often seen, that in addition to the direct claims related to the damages as suffered by the affected party, the claim for interest on the quantum of damages also forms an integral part of the total claim. This interest largely compensates the Claimant for the (a) lost business opportunity, (b) default risk of the other party and / or (c) the time value of money. ‘Interest’ is defined as “the return or compensation for the use or retention by one person for a sum of money belonging to or owned by any reason to another.”¹

* Amit Bansal is a Partner and Forensic - Financial Advisory at Deloitte Touche Tohmatsu India LLP. Shruti Gupta, Director and Forensic - Financial Advisory at Deloitte Touche Tohmatsu India LLP. Surabhi Dubey, Associate Director - Forensic – Financial Advisory, Deloitte Touche Tohmatsu India LLP. Shaurya Gupta, Senior Executive Forensic – Financial Advisory, Deloitte Touche Tohmatsu India LLP. The views expressed in this paper are personal and not of any organization with which authors have an affiliation. This paper is written only for an academic purpose and shall not be construed as a solicitation or a professional advice.

¹ *Id.*

These interest claims are broadly categorized into two categories:

- i. Pre-award interest claims – These include the interest on damages / claim as computed by the affected party for the period before the grant of award is made by the Arbitrator. The pre-award interest comprises of the interest that has accrued/accrues over the following two periods:
 - Between the date of cause of action to the date of reference²;
 - Between the date of reference (arbitration) to the date of award;
- ii. Post- award interest claims - These include the interest on damages claim as awarded by the Arbitrator from the period commencing after the grant of award made by the Arbitrator till the date of the payment of the award.

In India, Section 31 (7) of the Arbitration & Conciliation Act, 1996 [**“Act”**]³ empowers the Arbitrator and has laid down provisions for the payment/award of interest to the affected party. The provisions as per the Act are as follows:

31(7)(a) – “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, on the whole or any part of the money, 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.”

31(7)(b) – “A sum directed to be paid by an arbitral award shall, unless the award otherwise directs, carry interest at the rate of two per cent. higher than the current rate of interest prevalent on the date of award, from the date of award to the date of payment.”

Explanation.—The expression “current rate of interest” shall have the same meaning as assigned to it under clause (b) of section 2 of the Interest Act, 1978 (14 of 1978)”

The “current rate of interest” means the highest of the maximum rates at which interest may be paid on different classes of deposits (other than those maintained in savings account or those maintained by charitable or religious institutions) by different classes of scheduled banks in

² Date of reference can be either the date of invocation of arbitration / notice of dispute / filing of statement of claim.

³ The Arbitration and Conciliation Act, 1996.

accordance with the directions given or issued to banking companies generally by the Reserve Bank of India under the Banking Regulation Act, 1949 (10 of 1949).

However, in practice, it is seen that the parties to the dispute face challenges not only in arriving at the rate of interest under section 31(7)(a) i.e., pre-award interest claims but also have disagreements over the interest claim granted by the Arbitrator under section 31(7)(b). These challenges are briefly discussed in the ensuing sections.

II. OVERVIEW OF PROVISIONS RELATED TO INTEREST AWARDS AND ITS CHALLENGES

A. PRE-AWARD INTEREST

The pre-award interest is typically governed by the contractual terms of agreement as agreed between the parties and requires cautious interpretation of the contract clauses by the Arbitral Tribunal. The use of the words “Unless otherwise agreed by the parties” in Section 31(7)(a) of the Act indicates that only in the absence of an explicit agreement with regards to interest, the Act empowers the Arbitral Tribunal to use its discretion to grant interest award. The Supreme Court of India in one of its recent judgements clarified by stating that:

“when the parties have agreed with regard to any of the aspects covered under clause (a) of subsection of Section 31 of the 1996 Act, the Arbitral Tribunal would cease to have any discretion with regard to the aspects mentioned in the said provision. Only in the absence of such an agreement, the Arbitral Tribunal would have a discretion to exercise its powers under clause (a) of subsection (7) of Section 31 of the 1996 Act.”⁴

Further, Section 31(7)(a) of the Act provides that the Arbitral Tribunal shall award interest “at a rate which it deems reasonable”, however the Act neither explains the factors that indicate reasonableness of interest rates nor provides any guidance on the approach for determining reasonable rate of interest.

The provisions of section 31(7)(a) laid down in the Act appear to be ambiguous with regards to the rate of interest and provide no specific directions or guidelines to the affected party(s) which may assist them in computation of the interest claim. Accordingly, in practice, the affected party(s) often tend to apply their own analysis for determination of interest claims which at times is arbitrary in nature and may result into disagreements between the parties.

⁴ Delhi Airport Metro Express Private Limited v. Delhi Metro Rail Corporation (2021) 005627 / 2021

Further, based on our review of arbitration awards that were appealed in higher courts of law by aggrieved parties, we note that there is considerable subjectivity and inconsistency involved around the determination of interest claims. Some of the issues noted from case precedents are summarized below:

- i. **Pre-award interest awarded at uniform rate of interest on claims (i.e., principal sum) which were in dual currency modified by Supreme Court:** Pre-award interest related to claims in Indian currency and Euros was awarded by the Arbitrator in favour of the Claimant at a uniform rate of interest of 9% per annum which was objected by the Respondent and appealed in the Delhi High Court. However, on High Court's rejection of the appeal, the matter was referred to the Supreme Court wherein it was decided that "The award of Interest @ 9% on the Euro component of the Claim is unjustified and unwarranted...when the parties do not operate in the same currency, it is necessary to take into account the complications caused by differential interest rates. Interest rates differ depending upon the currency. It is necessary for the arbitral tribunal to co-ordinate the choice of currency with the interest rate. A uniform rate of Interest for INR and EUR would therefore not be justified." While Supreme Court retained the rate of 9% interest on the INR component awarded by the arbitral tribunal, with respect to the EUR component, the interest rate was modified at LIBOR rate plus 3% points, prevailing on the date of the Award.⁵
- ii. **Pre-award Interest claimed at substantially high rate of interest modified by High Court:** Pre-award interest claimed by the Respondent at a rate of 24% per annum was reduced by the Arbitral Tribunal at the time of granting award to 18% per annum. On further appeal by the Claimant in Delhi High Court, the Court observed that banking rate at all relevant times was much lower than the awarded rate of interest and held the award of 18% per annum to be unreasonable, irrational, unjustified and reduce the same to 9% per annum⁶
- iii. **Pre-award Interest awarded at unsupported rate of interest modified by High Court:** Pre-award interest awarded at the rate of 18% by the Arbitrator in favour of the Respondent was modified by the Delhi High Court due to lack of supporting evidence substantiating the rate of interest. The court reduced the rate of interest to 9% per annum

⁵ *Supra* note 2.

⁶ V4 Infrastructure Private Limited v. Jindal Biochem Private Limited (2018) O.M.P.(COMM)352/2017.

and stated “in absence of any evidence placed on record that could justify grant of interest at 18%, we are inclined to take into account the market rates and trade practice”.

7

- iv. **Pre-award Interest claim awarded at a much lower rate compared to the contractually agreed terms between the parties set aside by the High Court:** Pre-award Interest claimed by the Claimant at the rate of 36% per annum compounded annually in line with the contractual terms of the agreement between the parties was reduced by the Arbitrator to a simple interest rate of 7.5% per annum in the award. On further appeal by the Claimant, the Delhi High Court set aside the award⁸;
- v. **Pre-award Interest claim awarded in contrast to the terms of the contractual agreement between the parties quashed by Supreme Court:** Pre-award and post-award Interest awarded by the Arbitrator in the favour of Respondent at the rate of 12% and 18% respectively although the general conditions of the contract [“GCC”] governing the contract between the parties stipulated a bar against the payment of Interest. On appeal by the claimant/appellant in the High Court, the Division Bench of the High Court dismissed the said appeal and confirmed the award made by the learned arbitrator. However, on further appeal, the Supreme Court quashed and set aside the above judgment on the basis of existing contractual agreement between the parties.⁹

B. POST-AWARD INTEREST

Typically, it is believed that the rationale behind enactment of the provision under section 31(7) especially under sub-section (b) of the Act is to expedite the process of payment of the arbitral award once the award is granted by the Arbitrator. Supreme Court in one of its judgements related to post-award interest claims stated that “the purpose of enacting this provision is clear, namely, viz. encourage early payment of the awarded sum and to discourage the usual delay...”¹⁰

Section 31(7)(b) of the Arbitration and Conciliation Act, 2021 empowers the Arbitrator to award post-award interest on claims and stipulates the mechanism for computing the rate of

⁷ *Id.*

⁸ Turner Morrison Limited v. Rani Parvati Devi and ors. (2020) O.M.P. (COMM.) 50/2018 (Delhi High Court).

⁹ Union Of India v. Manraj Enterprises (2021) 006592 / 2021.

¹⁰ M/S Hyder Consulting (Uk) Ltd v. Governor State of Orissa (2014) 003148 / 2012.

interest i.e., “two per cent higher than the current rate of interest prevalent on the date of award.”

Further, in the absence of the words “Unless otherwise agreed by the parties” under 31(7)(b) (unlike section 31(7)(a) of the Act related to the pre-award interest awards), it may appear that the provisions of section 31(7)(b) would surpass any contractually agreed terms between the parties. However, in view of the recent Supreme Court judgement dated 5 May 2022¹¹, it is noted that in case the contractual agreement between the parties specifies the rate of post-award interest or the procedure of deriving the rate of interest then the award of post-award interest shall be governed by the terms of the agreement. The Supreme Court’s conclusion the referred matter specified

“We are therefore of the considered view that in view of the specific agreement between the parties, the interest prior to the date of award so also after the date of award will be governed by Article 29.8 of the Concession Agreement, as has been directed by the Arbitral Tribunal”.

However, it is seen that the post-award interest is also riddled with practical challenges such as those pertaining to rate of interest, type of rate of interest i.e., ‘simple’ or ‘compounded’ etc. Further, section 31(7)(b) does not make any reference to payment of compound interest or any interest on interest. In absence of any clarity whether awarded interest should be on sum due alone or on entire sum due and pre-award interest (i.e., interest on interest) etc., the arbitral awards related to the post-award interest have also been subject to appeal in the higher courts of law. Some of the issues noted from case precedents are summarized below:

- i. **Post-award interest awarded at a substantially high rate of interest modified by Supreme Court:** Post-award interest on multi-currency claim amount awarded by the Arbitrator in favour of the Claimant at a rate of 15% per annum was objected by the respondent/appellant and appealed in the Delhi High Court. However, on High Court’s rejection of the appeal, the matter was referred to the Supreme Court wherein the rate of 15% per annum was considered as “exorbitant... from an economic standpoint and having no correlation with the prevailing contemporary international rates of interest’ and further reduced to 9% per annum”¹²;

¹¹ *Supra note 5.*

¹² *Supra note 2.*

- ii. **Post-award interest awarded at compounded rate (i.e., interest on interest) modified by High Court but later restored by Supreme Court:** Post-award interest was awarded by the Arbitrator to the Claimant at the rate of 18% per annum on the total claim amount i.e., principal sum including the interest component (i.e., interest on interest). However, the Respondent appealed the matter in the High Court wherein not only the entitlement for post-award interest on interest claim was denied (i.e., interest on interest) but post-award interest claim on the principal sum was reduced from 18% per annum to 9% per annum. However, on further appeal by the claimant/ appellant in the Supreme Court, the High Court's order was quashed and set aside and the award passed by the learned Arbitrator on the aforesaid aspect was restored.¹³

III. GUIDANCE ISSUED BY THE CHARTERED INSTITUTE OF ARBITRATORS

The Chartered Institute of Arbitrators [the "CI Arb"] has published a guidance note dated 27 March 2019 on "Practice Guideline 13: Guidelines for Arbitrators on how to approach the making of awards on interest" which explains the following factors to be considered by an Arbitrator in making interest award:

"Para 1.2.8 - The making of an award of interest will involve consideration of a number of factors including:

- a) the period for which interest should be awarded;
- b) the rate of interest to be awarded;
- c) whether simple or compound interest should be granted; if compound, on what basis should it be compounded."

The above key factors in essence provide a broad framework for award of interest which can be considered and applied in any arbitration proceedings. However, we understand that while there is limited deliberation amongst the parties and the Arbitrator on "the period for which interest should be awarded", there has been considerable challenges and disagreements with regards to the "rate of interest to be awarded" and the nature of rate of interest i.e., whether 'simple or compounded'.

¹³ Indian Oil Corporation. Ltd. v. U.B. Engineering Ltd (2022) 002911 / 2022.

In order to reduce the challenges related to the determination of rate of interest, we have enumerated some of the key approaches in the ensuing paragraphs that may be considered by the affected party at the time of determining interest claims.

IV. DETERMINATION OF APPROPRIATE RATE OF INTEREST

While there are certain approaches available for determining the rate of interest, the selection of appropriate approach is primarily dependent on the facts of each dispute matter at hand. Further, the Supreme Court in its decision on *Vedanta Limited v. Shenzhen Shandong Nuclear Power* dated 11 October 2018 laid down certain factors for consideration by Arbitral Tribunal while making an interest award¹⁴. Although in the referred matter, these factors were referred for post-award interest related to an international commercial arbitration, in our view, these factors provide a foundation for determining any interest claim. These factors are as follows:

- i. the 'loss of use' of the principal sum;
- ii. the types of sums to which the interest must apply;
- iii. the time period over which interest should be awarded;
- iv. the internationally prevailing rates of interest;
- v. whether simple or compound rate of interest is to be applied;
- vi. whether the rate of interest awarded is commercially prudent from an economic standpoint;
- vii. the rates of inflation, and
- viii. proportionality of the count awarded as interest to the principal sums awarded.

In our view, the above factors address most of the concerns involved in selection of appropriate rate of interest and therefore may be evaluated by the affected party in order to compute interest claims. However, based on various court judgements, it emerges that the contractual agreement between the parties regarding interest claims along with the rate of interest, as specified in the contract, will have a superseding effect and shall prevail.

¹⁴ *Supra* note 2.

The various approaches that are largely applied for determining pre-award rate of interest which shall largely compensate the Claimant for the (a) lost business opportunity, (b) default risk of the other party and/or (c) the time value of money. These approaches along with the scenario under which such rates could be useful (on an illustrative basis) are mentioned below:

A. COST OF BORROWINGS OR FINANCING

This cost represents the rate at which a company borrows monies from the market or any other sources and funds its business operations. The rate under this approach shall depend on the period and nature of the dispute between the parties and is typically determined or are based on the following inputs:

i. **Existing rate of interest at which monies are borrowed by the company:** The existing rate of interest at which monies are borrowed (depending upon the source of funds) for the purpose of financing projects. The following factors may be evaluated in the determination of appropriate rate of interest under this approach:

- a) In case of specific / single financing arrangement for the project the affected party may directly consider the rate of interest mentioned in the sanction or arrangement letter;
- b) In case there are multiple financing arrangements, the affected party may compute average effective rate of interest over a reasonable period of time (typically five years) which can be computed as follows:

Actual interest paid in each previous year divide by the average balance of the borrowings in each previous year (i.e., average of opening and closing balance)

- c) In case there are multi-currency financing arrangement, the affected party shall analyse the terms of the arrangement, compute the effective rate of interest for each currency separately and thereafter select the most appropriate rate of interest as applicable for the project under dispute;

ii. **Rate of interest prevailing in the market:** This refers to the lending rate of interest as prevalent in the market, however, certain additional factors will also need to be evaluated such as the place of investment, currency of borrowings, etc. Typically, the lending rate offered by the State Bank of India (largest bank in India) is looked at for determining the market rate of interest as existing around the period of dispute.

iii. **Project or Equity Internal rate of return (IRR) of the project:** As stated by Aswath Damodaran “internal rate of return [“IRR”] is a discount rate that makes the net present value zero. It can be considered as a time-weighted, cash flow, rate of return on an investment”. Basically, under this approach, the IRR is computed by equating the present value of cash inflows to the present value of cash outflows of the project.

While, for the Project IRR, the cashflows considered would be the ones directly benefiting the project, the equity IRR measures the returns for the shareholders of company, after the debt has been paid off. Therefore, the latter is based on the free cash flows to equity holders.

In dispute situations, the investor or the affected party tend to compute the expected IRR for the purpose of claiming damages from the project (under dispute) which could either be based on the business plan as agreed between the parties or as approved by the banker’s independent evaluator or as approved by the Contractors (in case of infrastructure projects). This expected IRR represents the expected return for the affected party from the project and is considered as an indicator for arriving at the damages

In some cases, the IRR is explicitly mentioned/agreed at the commencement of the project based on which the investor undertakes to make investment, e.g., in case of road and highway projects, the equity IRR is even mentioned in the bid/concession documents floated by the authorities as profitability or return offerings to concessionaires.

B. COST OF EQUITY AS PER CAPM MODEL

As defined by the Corporate Finance institute “The Capital Asset Pricing Model [“CAPM”] is a model that describes the relationship between the expected return and risk of investing in a security”. This relationship is termed as Cost of equity which represents the return expected by the equity investors (i.e., the shareholders) in compensation of the risk they undertake by investing their capital (monies) in the business. The cost of equity is determined as per the following formula:

$$\text{Expected return} = \text{risk free rate} + (\text{beta} * \text{market risk premium})$$

- i. Where, risk free rate is equal to the yield on a 10-year zero coupon yield risk free bond issued by the government;
- ii. Beta is the measure of market risk
- iii. Market risk premium represents the additional return over and above the risk-free rate, which is required to compensate investors for investing in a riskier asset class.

Typically, this approach can be relevant in arriving at rate of interest (equivalent to cost of equity) that involves claims related to return on money invested under dispute situation arising from breach or termination of the shareholder or a joint venture agreement.

C. COST OF CAPITAL OR EXPECTED RATE OF RETURN FOR THE MARKET

As stated by Shannon Pratt¹⁵ in his book on Cost of Capital, Estimation and Applications, second edition,

“Cost of capital is the expected rate of return that the market requires in order to attract funds to a particular investment. In economic terms, the cost of capital for a particular investment is an opportunity cost—the cost of forgoing the next best alternative investment”¹⁶.

The cost of capital also referred as the weighted average cost of capital is the sum of cost of equity and cost of debt mentioned above as weighted by its percentage in total capital.

Shannon Pratt in his book has quoted the following material that explains how the cost of capital can be viewed from three different perspectives:

“The cost of capital (sometimes called the expected or required rate of return or the discount rate) can be viewed from three different perspectives.

- On the asset side of a firm’s balance sheet, it is the rate that should be used to discount to a present value the future expected cash flows;

¹⁵ Shannon Pratt, CFA, ARM, ABAR, FASA, MCBA, MCBC, CM&AA, was a well-known authority in the field of business valuation and has written numerous books that articulate many of the concepts used in modern business valuation around the world.

¹⁶ Second Edition Shannon P. Pratt, Cost of Capital: Estimation and Applications, Page 3 (John Wiley & Sons, Inc.2002).

- On the liability side, it is the economic cost to the firm of attracting and retaining capital in a competitive environment, in which investors (capital providers) carefully analyze and compare all return-generating opportunities.
- On the investor's side, it is the return one expects and requires from an investment in a firm's debt or equity. While each of these perspectives might view the cost of capital differently, they are all dealing with the same number."¹⁷

In order to appropriately apply the cost of capital, it is important for the affected party to set the right perception and understand the context under which it intends to apply the cost of capital.

Typically, investors consider the cost of capital as one of the financial metrics in evaluating commitment of capital to a potential investment or project. For an investor, the cost of capital would signify the minimum expected rate of return that the investor would be willing to accept to justify making the investment depending on the degree of risk of the prospective investment.

However, in terms of valuation of projects or companies, the cost of capital operates as the primary mechanism for measuring and adjusting for risk in the expected cash flows. Under the discounted cash flow technique of valuation (also referred as DCF analysis), the cost of capital becomes relevant as it is used as the discount rate for the company's (or projects) free cash flows in the analysis.

The most common approach for computing the cost of capital is to use the Weighted Average Cost of Capital ["WACC"]. Under this method, all sources of financing are included in the calculation, and each source is given a weight relative to its proportion in the company's capital structure.

$$\text{WACC} = (E/V \times R_e) + ((D/V \times R_d) \times (1 - T))$$

Where:

- iv. E = market value of the firm's equity (market cap)
- v. D = market value of the firm's debt

¹⁷ Second Edition Shannon P. Pratt, Cost of Capital: Estimation and Applications, Page 4 (John Wiley & Sons, Inc.2002).

- vi. V = total value of capital (equity plus debt)
- vii. E/V = percentage of capital that is equity
- viii. D/V = percentage of capital that is debt
- ix. R_e = cost of equity (required rate of return)
- x. R_d = cost of debt (yield to maturity on existing debt)
- xi. T = tax rate

Typically, this approach can be relevant in arriving at rate of interest (equivalent to cost of capital) in such dispute situations that involves claims related to returns on investments (or projects) which depends on the risks involved and shall vary with the structure of investments.

Risk-free rate of interest: The risk-free rate of return is the minimum rate of return that an investor can expect to earn on an investment that carries zero risk. In India, risk-free rates represent the yields from zero-coupon bonds issued by the government and have varied maturity periods. This approach offers minimum compensation to a claimant for the time value of money, but at the relatively low rate of return and hence may be observed as an extremely conservative approach.

In addition to the above there exist an economic theory of 'forced loan' wherein the monies (damages) which were unpaid by the Respondent and thereby deprived of its use by the Claimants is considered to take the form of a forced loan given by the Claimant to the Respondent. In such situations, the Respondent's cost of borrowing is considered as the proxy for determination of pre-award interest rate. In practice, the theory has found limited application as typically it the Claimant's cost of borrowings or other rates that are considered more suitable to restore the Claimant's position prior to the breach/dispute. In our view, the suitability of the application of the theory of forced loan would need to be evaluated on a case-to-case basis.

Further, there is a concept of discount rate which represents the rate that is used for determining the present value of future cash flows in a discounted cash flow ["DCF"] analysis for assessing damages/loss of profit. For a given case depending upon the assessment carried out, it could be that the discount rate and rate of interest chosen for determination of interest claim is the same rate.

In an article published by GAR¹⁸ dated 1 February 2021¹⁹, a study of the published awards / cases (over the period 1988 to 2020) on the International Centre for the Settlement of International Disputes [“ICSID”] website indicated that out of 68 cases in which pre-judgment interest was awarded, 36 included interests on a compounded basis and while in the remaining 32 cases simple interest was awarded. From this statistic, it emerges that in the recent times, the Tribunals are increasingly awarding interest damages on a compounded basis. In our view, the evolving development and shift in the basis of interest rate from simple to compound appears to be the right approach from both financial and commercial standpoint as this will assist the Claimant in reinstating its position that existed before the breach or dispute situation arose, however, one may need to evaluate its applicability in light of the facts of the matter.

V. KEY ASPECTS RELATED TO POST-AWARD INTEREST

There are two key challenges on the post-award interest claim that have often been a topic of debate in various arbitral awards and are further adjudicated by the higher courts of law.

First relates to the question whether the post-award interest should be a simple interest or compound interest basis.

While 31(7)(b) of the Act outlines the provision for the award of post-award interest, it empowers and allows the Arbitral Tribunal to use its discretion on whether the post award interest needs to be on a simple or compound basis unless otherwise specified by the parties (in agreements/contracts). However, based on the statistics mentioned in 4.10 above, in our view, the evolving development and shift in the basis of interest rate from simple to compound appears to be the right approach from both financial and commercial standpoint as this will assist the Claimant in reinstating its position that existed before the breach or dispute situation arose, however, one may need to evaluate its applicability in light of the facts of the matter.

Second relates to the question whether the amount considered for the purpose of computing the interest claim should include pre-award interest (i.e., interest on interest) or whether should it be on the principal amount awarded by the Arbitral Tribunal (i.e., excluding the pre-award interest). Supreme Court has addressed the issue related to interest on interest and come to a conclusion in one of its judgments²⁰ According to the Supreme Court, the arbitral award made

¹⁸ Global Arbitration Review.

<https://globalarbitrationreview.com/guide/the-guide-damages-in-international-arbitration/4th-edition/article/pre-award-interest>

²⁰ M/S Hyder Consulting (Uk) Ltd v. Governner State of Orissa Through Chief Engineer (2015) 2 SCC 189.

under 31(7)(a) of the Act, whether with interest or without interest, constitutes a "sum" for which the award is made. Further, section 31(7)(b) of the Act employs the words

"sum directed to be paid by an arbitral award" shall carry interest for the purpose of awarding post-award interest. Accordingly, in Supreme Court's view "the expression 'grant of interest on interest' does not arise while exercising the powers of the Act²¹".

In summary, the 'sum' awarded under section 31(7)(a) would include both the principal amount and the pre-award interest awarded by the Arbitral Tribunal and the post-award interest shall be computed on this 'sum' only.

Further, we note that the above referred judgement has been also applied to overrule the decisions made by the respective High Courts in other matters concerning this issue²².

VI. CONCLUSION

The challenges and issues in interest claims noted in this paper underline the need for and importance of adopting of a more rationalized approach towards the determination of interest claims.

We anticipate that the evaluation and selection of appropriate approaches for interest determination as suited to the facts/circumstances of each case combined with the jurisprudence factors stipulated by the Supreme Court²³ shall assist the parties in reducing the inconsistencies and related anomalies to a great extent.

Further, we foresee that the application of prudent approaches for interest claims in dispute situations that also reflects the prevailing economic conditions shall benefit the parties with accelerated resolutions/conclusions to dispute matters which shall further assist in avoiding prolonged disagreements.

²¹ *Id.*

²² Decisions overrules in case of State of Haryana & Others v. S.L. Arora & Company (2010) 3 SCC 690 and UHL Power Company Limited v. the State of Himachal Pradesh 2022 SCC OnLine SC 19.

²³ *Supra note 2.*