

Contractual Bars to Pre-Award Interest: What Must Be The Nature Of Prohibition?

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INTRODUCTION

1. Section 31(7)(a) of the [Arbitration and Conciliation Act, 1996](#) (“**Arbitration Act, 1996**”) stipulates that unless otherwise agreed by the parties, an arbitral tribunal may grant pre-award interest i.e. pre-reference and pendente lite interest at such rate as it deems reasonable. However, while the Act makes room for such contractual provisions proscribing the grant of pre-award interest, it is silent on the nature of such prohibition. The Act does not elaborate upon the extent to which a general prohibition on granting interest for certain delayed payments or on amounts payable to the contractor under the contract bars the arbitral tribunal from granting interest. This has given rise to elaborate jurisprudence on the effectiveness of contractual provisions barring the grant of pre-award interest.

JUDICIAL INTERPRETATION IN THE INITIAL YEARS

No Bar Against the Award of Pre-Reference and Pendente Lite Interest

2. The question regarding the arbitral tribunal’s authority to award pendente lite interest notwithstanding a prohibition in the contract against the payment of interest on delayed payments first came up under the [Arbitration Act, 1940](#) (“**Arbitration Act, 1940**”) before a division bench of the Supreme Court in [Port of Calcutta v. Engineers-](#)

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De-Space-Age (“**Port of Calcutta**”).² The interest proscribing clause stated as follows:

“No claim for interest will be entertained by the Commissioners with respect to any money or balance which may be in their hands owing to any dispute between themselves and the Contractor or with respect to any delay on the part of the Commissioners in making interim or final payment or otherwise.”

3. While considering the prohibitory clause, the Supreme Court relied on the principles enunciated by the constitution bench in Irrigation Deptt., Govt. of Orissa v. G.C. Roy³ (“**G.C. Roy**”), wherein the Supreme Court had surmised that an arbitral tribunal would have the authority to award interest for the pre-reference, pendente lite and post-award period if the contract had no express bar regarding the award of such interest.
4. Interestingly, the Supreme Court concluded that the aforementioned clause only prohibited the Commissioner from entertaining any claims for interest. The Court adopted a strict construction of the clause and held such clauses to not be applicable to the arbitral tribunal. This approach was again followed by the Supreme Court in Madnani Construction v. Union of India.⁴
5. Thereafter, in State of U.P. v. Harish Chandra & Co.⁵ (“**Harish Chandra**”), a three-judge bench of the Supreme Court dealt with a similar question regarding the interest payable on damages. The relevant clause prohibiting interest stated as follows:

“No claim for interest or damages will be entertained by the Government with respect to any moneys or balances which may be lying with the Government owing to any dispute, difference; or misunderstanding between the Engineer-in-Charge in marking periodical or final payments or in any other respect whatsoever.”

6. The Court held that the clause barred interest only for “moneys or balance” lying with the Government for the specified reasons or for any other reasons which would lead to such moneys lying with the Government. The Court noted that the damages claimed could not be inferred as “money lying with the Government”. Hence, the arbitral tribunal was held entitled to have granted pre-reference interest to the Claimant. It is

² Port of Calcutta v Engineers-De-Space-Age (1996) 1 SCC 516.

³ Irrigation Deptt., Govt. of Orissa v G.C. Roy (1992) 1 SCC 508.

⁴ Madnani Construction v Union of India (2010) 1 SCC 549.

⁵ State of U.P. v Harish Chandra & Co. (1999) 1 SCC 63.

imperative to note that this decision was also given in context of the Arbitration Act, 1940.

Agreements Barring the Award of Pre-Reference or Pendente Lite Interest

7. In [*Sayeed Ahmed & Co. v. State of U.P.*](#)⁶ (“Sayeed Ahmed”), while dealing with an interest barring clause in the context of the Arbitration Act, 1996, a division bench of the Supreme Court described the distinction between a prohibition in an interest barring clause operating only against the other party, and a prohibition operating qua the arbitrator from entertaining such claims (as held in *Port of Calcutta*) as outlandish. It was held that an interest proscribing clause did not necessarily need to include a specific bar against the arbitral tribunal. The relevant clause in Sayeed Ahmed stated as follows:

“No claim for interest or damages will be entertained by the Government with respect to any money or balance which may be lying with the Government or any become due owing to any dispute, difference or misunderstanding between the Engineer-in-Charge on the one hand and the contractor on the other hand or with respect to any delay on the part of the Engineer-in-Charge in making periodical or final payment or in any other respect whatsoever.”

8. The Court specifically noted that the previous decisions allowing for the award of interest despite the existence of such prohibitory clauses in the contract could not be applicable to arbitrations under the Arbitration Act, 1996. Further, the Court observed that the clause in *Harish Chandra* was restrictive in nature, and barred interest on payments only related to the “moneys lying” with the opposite party due to certain reasons. However, detailed clauses like the aforementioned clause were held to absolutely bar the grant of interest in any respect. Similar observations were made by the Court in [*Sree Kamatchi Amman Constructions v. Railways*](#).⁷
9. In view of the conflicting judgments regarding an arbitral tribunal’s authority to award interest in *Port of Calcutta*, *Madnani Construction*, *Sayeed Ahmed* and *Kamatchi Constructions*, the question of determining when the grant of interest could be

⁶ Sayeed Ahmed & Co. v State of U.P. (2009) 12 SCC 26.

⁷ Sree Kamatchi Amman Constructions v Railways (2010) 8 SCC 767.

prohibited under the Arbitration Act, 1940 was referred to a three-judge bench in [*Union of India v. Ambica Construction*](#) (“**Ambica Construction**”).⁸

10. The three-judge bench relied on the judgments in *G.C. Roy* and [*Dhenkanal Minor Irrigation Division, Orissa v. N.C. Budharaj*](#)⁹ to opine that the answer would depend on the nature of the prohibitory clause in each case, and the overall intention of the agreement. The Court also observed that while arbitration was understood to be an alternative mode of dispute resolution, an arbitral tribunal did not automatically possess all powers conferred on courts of law and was bound to decide disputes as per the agreement entered into between the parties.
11. Thereafter, in [*Ferro Concrete Construction \(India\) \(P\) Ltd. v. State of Rajasthan*](#),¹⁰ another division bench of the Supreme Court relied on *Ambica Construction* to hold that under the Arbitration Act, 1940, a strict approach must be adopted, and a clause not specifically mentioning the arbitral tribunal, but providing that no interest may be granted on “*amounts payable*” under the contract shall not bar the tribunal from granting pre-award interest.

The shift in interpretation

12. The jurisprudence regarding the nature of interest barring clauses was sought to be settled by a three-judge bench in [*Jaiprakash Associates Ltd. v. Tehri Hydro Development Corpn. \(India\) Ltd.*](#)¹¹ (“**Jaiprakash Associates**”) The relevant clause in *Jaiprakash Associates* stated as follows:

“No claim for interest or damage will be entertained or be payable by the corporation in respect of any amount or balance which may be lying with the corporation owing to any dispute, difference or misunderstanding between the parties or in respect of any delay or omission on the part of the Engineer in charge in making intermediate or final payments or in any other respect whatsoever.”

13. The Court emphasized on the change in the nature of authority to grant interest under the Arbitration Act, 1940 and the Arbitration Act, 1996, and exhaustively discussed the previous judgments in this regard. Additionally, the Court expressly noted that the

⁸ *Union of India v Ambica Construction* (2016) 6 SCC 36.

⁹ *Dhenkanal Minor Irrigation Division v N.C. Budharaj* (2001) 2 SCC 721.

¹⁰ *Ferro Concrete Construction (India) (P) Ltd. v State of Rajasthan* 2025 SCC OnLine SC 708.

¹¹ *Jaiprakash Associates Ltd. v Tehri Hydro Development Corpn. (India) Ltd.* (2019) 17 SCC 786.

Port of Calcutta judgment had been given under the Arbitration Act, 1940, after which, the position of law underwent a change, as clarified in the Sayeed Ahmed judgment.

14. When faced with the question regarding the correctness of *Sayeed Ahmed* in view of the three-judge bench decision in *Harish Chandra*, the Court noted that *Harish Chandra* was a decision under the Arbitration Act, 1940, given in context of a restrictive clause, which had been interpreted to not bar the arbitral tribunal's power to award pre reference interest.
15. Another intriguing question before the Court was regarding the interpretation of such broadly worded interest proscribing clauses – prohibiting the grant of interest “*in any other respect whatsoever*”, and whether such broad constructions should be subject to the rule of ejusdem generis, thereby restricting the prohibition only to conditions/ situations similar to those enumerated in such clauses, and not being applicable to all claims of interest on damages, as explained in *Harish Chandra*. The Court noted that the rule of ejusdem generis would be applicable only in the cases where the terms preceding the words of broad construction/ general import form a distinct genus. The said construction could not be applied where the terms preceding such words of broad construction set out different criteria barring the claims of interest, since they would not form part of a distinct genus.
16. Finally, the Court emphasized that the grant of *pendente lite* interest would depend on the phraseology used in the agreement, and a clause stipulating that no interest would be payable in certain circumstances and in any other respect whatsoever, would lead the Court to find an express bar against the payment of interest.
17. Thereafter, questions regarding the interpretation of such clauses once again came up before division benches of the Supreme Court in [*UOI v. Manraj Enterprises*](#)¹² and [*Garg Builders v. Bharat Heavy Electricals Limited*](#).¹³ The relevant clauses were as follows:

“No interest will be payable upon the earnest money or the security deposit or amounts payable to the contractor under the contract, but government securities

¹² Union of India v Manraj Enterprises (2022) 2 SCC 331.

¹³ Garg Builders v BHEL (2022) 11 SCC 697.

deposited in terms of sub-clause (1) of this clause will be repayable with interest accrued thereon.”

“No interest shall be payable by BHEL on Earnest Money Deposit, Security Deposit or on any moneys due to the contractor.”

18. Relying on the principles enunciated in *Sayeed Ahmed and Jaiprakash Associates*, in both cases, the Court held that a bar on interest related to any amounts that would be “payable” to the contractor under the contract or “would be due” to the contractor qualified as an absolute bar under Section 31(7)(a) of the Arbitration Act, 1996.
19. In *Manraj Enterprises*, the Court also relied upon another three-judge bench decision in [*Union of India v. Bright Power Projects \(India\) \(P\) Ltd.*](#),¹⁴ wherein the Court had evaluated the following clause:

“No interest will be payable upon the earnest money and the security deposit or amounts payable to the contractor under the contract, but government securities deposited in terms of sub-clause (1) of this clause will be repayable with interest accrued thereon”

20. The Court had noted that once a contractor agreed to not claim any interest on any amount payable under the contract, it could not claim interest on such amounts either before a civil court or an arbitral tribunal. Hence, the expression “*amounts payable to the contractor under the contract*” was considered to be wide enough to cover all such amounts which became payable, even under an arbitral award.
21. Despite the decisions in the aforementioned cases, there has been considerable ambiguity surrounding the proper construction of interest proscribing clauses. In [*ONGC Ltd. v. G & T Beckfield Drilling Services \(P\) Ltd.*](#)¹⁵ (“**Beckfield**”), a division bench of the Supreme Court has again attempted to clarify the position. The relevant contractual clause stated as follows:

“...Should corporation question any item or items of an invoice, it may withhold payment of the amount in dispute until such matter is resolved between the parties, but the amount not in dispute is to be paid within above period. No interest shall be payable by ONGC on any delayed payment /disputed claim.”

¹⁴ *Union of India v Bright Power Projects (India) (P) Ltd.* (2015) 9 SCC 695.

¹⁵ *ONGC Ltd. v G & T Beckfield Drilling Services (P) Ltd.* 2025 SCC OnLine SC 1888.

22. The question in this case arose because the award of the arbitral tribunal granting pendente lite interest was challenged as interest being granted on delayed payments. However, the Court, while relying on a series of judgments, held that pendente lite interest granted by the tribunal would not qualify as interest on a “*delayed payment*”, and hence, bars on such delayed payments would not constitute a prohibition on the grant of pendente-lite interest by the arbitral tribunal.
23. The Court also discussed the law under the Arbitration Act, 1996 in detail and emphasized that while the grant of post award interest is purely governed by the Arbitration Act, 1996 and is not subject to the agreement between the parties, the parties may very well contract out of the interest for the pre-reference and pendente lite period.

DISTINCTION BETWEEN THE ARBITRATION ACT, 1940 AND THE ARBITRATION ACT, 1996

24. The Arbitration Act, 1940 incorporated no specific provision empowering the arbitral tribunal to grant interest. However, in various judgments, as mentioned hereinabove, the Supreme Court has [recognized the arbitral tribunal’s authority to grant pre-award and post-award interest](#) on the rationale that persons deprived of the use of money to which they are legitimately entitled would also be entitled to compensation for such deprivation.¹⁶ Therefore, when the contract did not prohibit the grant of interest, it was presumed that the possibility of granting interest was an implied term in the agreement.
25. Moreover, since clauses barring the payment of interest are generally frowned upon, Courts subjected such clauses to the test of strict construction. Consequently, applying this principle under the Arbitration Act, 1940, unless there existed an express and specific provision prohibiting the arbitral tribunal from awarding interest, it was presumed that the tribunal had the authority to grant interest.
26. In contrast, Section 31(7)(a) of the Arbitration Act, 1996 bars the payment of interest if the agreement provides otherwise, thereby sanctifying party autonomy and dispensing with the requirement of the agreement incorporating a specific bar against

¹⁶ Pam Developments (P) Ltd. v State of W.B. (2024) 10 SCC 715.

the arbitral tribunal from granting interest. The Arbitration Act, 1996, therefore, sources the authority of the arbitral tribunal to grant pre-award interest not from the general principle of an aggrieved party being entitled to claim interest, but from the very agreement which authorizes the tribunal to adjudicate the dispute. Accordingly, arbitral tribunals have been vested with the jurisdiction to award interest for the pre-award (pre-reference and pendente lite periods) and post-award periods, permitting parties to contract out of interest only in respect of the former.

27. In [*Reliance Cellulose Products Limited v. ONGC Limited*](#),¹⁷ a Division Bench of the Supreme Court observed that while the grant of pre-award interest under the Arbitration Act, 1940 depended on the phraseology used in the agreement, nature of the claim, the items regarding which the power to award interest had been taken away, and other factors; under the Arbitration Act, 1996, a plain bar in the agreement would constitute sufficient prohibition on the grant of pre-award interest. However, even while evaluating the clause in the context of the Arbitration Act, 1940, the Court did not consider a bar on interest for “*any delayed payments*” as a bar against the award of interest by the arbitral tribunal, an observation which has also been made by the Supreme Court in *Beckfield*, in the context of the Arbitration Act, 1996.

THE WAY FORWARD

28. Construction contracts are generally executed over a long period of time, often as a result of multiple extensions of time. Consequently, interest proscribing clauses are usually incorporated in such contracts. To arrive at a definitive understanding of how such clauses must be drafted, it is essential to examine the manner in which Courts have interpreted these clauses.
29. In *Port of Calcutta*, the Court never ventured into an interpretation of the interest barring clause. The clause was simply understood to operate as a bar only with respect to the opposite party, and not with respect to the arbitral tribunal. In *Harish Chandra*, the relevant clause prohibited interest for “*any moneys lying with the government*” for the two reasons specified or “*in any other respect whatsoever*”. Hence, the clause was inferred to bar interest on claims related to moneys lying with the government for the

¹⁷ *Reliance Cellulose Products Limited v ONGC Limited* (2018) 9 SCC 266.

reasons given and on claims related to moneys lying with the government in any other respect.

30. Pertinently, the construction of the interest proscribing clauses in the judgments pronounced thereafter materially differed from the clause in *Harish Chandra*. For instance, the relevant clauses in *Sayeed Ahmed* and *Jaiprakash Associates* prohibited interest in respect of “*the money lying with the government owing to any dispute*” or “*in respect of any delays in making payments*” or “*in any other respect whatsoever*”. Since there was no distinct genus, the phrase “*any other respect whatsoever*” was considered to be of a wide import, including interest on damages as well.
31. Recently, the Delhi High Court has examined such interest proscribing clauses in a similar manner. In [*South Delhi Municipal Corporation of Delhi v. PKSS Infrastructure Private Limited*](#),¹⁸ the arbitral tribunal had granted pre-award interest, despite the relevant clause stating as follows:

“The EMD, Cash Security and the Contract Performance Guarantee shall not carry any interest whatsoever in any circumstances.”

32. Since the clause expressly provided that no interest whatsoever would be payable on these items, the Court rejected the contention that the tribunal could have awarded interest on the amounts due notwithstanding the said clause, and set aside the award to that extent.
33. Thereafter, in [*National Building Construction Corporation v. Sharma Enterprises*](#),¹⁹ the relevant clause stated as follows:

“No claim for interest will be entertained by the corporation in respect of any balance payments or any deposit which may be held up with the corporation due to any dispute between the Corporation and sub-contractor or in respect of any delay on the part of the corporation in making monthly or final payments or otherwise.”

34. The Court held that the clause in question did not merely restrict the payment of interest for delayed items, rather, the usage of the words “*or otherwise*” broadened

¹⁸ South Delhi Municipal Corpn. of Delhi v PKSS Infrastructure (P) Ltd. 2025 SCC OnLine Del 7750.

¹⁹ National Building Construction Corpn. v Sharma Enterprises 2025 SCC OnLine Del 8505.

the scope of the clause and implied a general prohibition on the grant of pre-award interest.

35. While it is now established that an express or implied prohibition on interest must be given effect under Section 31(7)(a) of the Arbitration Act, 1996, the nature of the prohibition remains a grey area. While the Court has clarified that a bar on interest on “*amounts payable to the contractor*” may qualify as an absolute bar, a plain prohibition on awarding interest on “*delayed payments*” or “*disputed claims*” has not always been inferred as a bar to the award of pre-reference and pendente lite interest by the arbitral tribunal. In *Beckfield*, the Supreme Court has distinguished between clauses specifically prohibiting interest “*in any respect whatsoever*”, and those only barring interest on delayed or disputed invoices, holding the latter clauses to be inconsequential for the grant of pre-award interest.
36. In these circumstances, as mentioned in *Ambica Construction*, the nature and construction of the ouster clause seems to be the only determinative factor to understand the extent to which the arbitral tribunal is prohibited from awarding interest. Therefore, while clauses simply prohibiting interest on delayed payments cannot constitute an effective bar, clauses specifying the various situations in which no interest shall become due, clauses emphasizing that no interest *shall become payable* at any point of time, and clauses highlighting that no interest shall be granted *in any respect whatsoever* to the aggrieved party are likely to withstand judicial scrutiny.