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REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO .3657 OF 2022
[Arising out of Special Leave Petition (Civil) No.4901 of 2022]

DELHI AIRPORT METRO EXPRESS PRIVATE LIMITED ...APPELLANT(S)

VERSUS

DELHI METRO RAIL CORPORATION ...RESPONDENT(S)

J U D G M E N T

B.R. GAVAI, J.

1. Leave granted.

2. The short question involved in the present appeal is, as to whether the "sum" awarded under clause (a) of sub-section (7) of Section 31 of the Arbitration and Conciliation Act, 1996

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(hereinafter referred to as the "1996 Act") would include the interest *pendente lite* or not?

3. The undisputed facts in the present case are as under:

4. On being declared as the successful bidder, a Concession Agreement dated 25th August, 2008 (hereinafter referred to as "the Concession Agreement"), was entered into between the appellant–Delhi Airport Metro Express Private Limited (hereinafter referred to as "DAMEPL") and the respondent-Delhi Metro Rail Corporation (hereinafter referred to as "DMRC"). As per the Concession Agreement, the respondent-DMRC was to carry out the civil works (excluding at the Depot) and the balance works (including the Depot civil works and the Project systems works) were to be executed by the appellant-DAMEPL. As per Article 29 of the Concession Agreement, in the event of termination, it was the respondent-DMRC, which was liable to make Termination Payment (as defined in the Concession Agreement).

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5. During the course of operations of the project, a dispute arose between the appellant-DAMEPL and the respondent-DMRC. The appellant-DAMEPL terminated the Concession Agreement by Termination Notice dated 8th October, 2012. The respondent-DMRC referred the dispute to Arbitration under Article 36.2 of the Concession Agreement on 23rd October, 2012. An Arbitral Award came to be passed on 11th May, 2017. On 12th May, 2017, the appellant-DAMEPL paid a stamp duty of Rs.4,72,20,000/- on the Award. Certain interim orders were also passed in the interlocutory proceedings by the Delhi High Court. Since the respondent-DMRC was aggrieved by the Award, it filed a Petition under Section 34 of the 1996 Act in Delhi High Court, being OMP (COMM) No.307 of 2017, challenging the Arbitral Award dated 11th May, 2017. Vide the judgment and order dated 6th March, 2018, the learned Single Judge of the Delhi High Court upheld the Arbitral Award and rejected the respondent-DMRC's petition under Section 34 of the 1996 Act. The said judgment and order dated 6th March,

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2018 came to be challenged by the respondent-DMRC before the Division Bench of the Delhi High Court by way of appeal being FAO(OS)(COMM) No. 58 of 2018. The said appeal was partly allowed by the Division Bench of the Delhi High Court vide the judgment and order dated 15th January, 2019. Being aggrieved thereby, the appellant-DAMEPL preferred Civil Appeal No.5627 of 2021 [arising out of Special Leave Petition (Civil) No.4115 of 2019] before this Court. The said appeal came to be allowed by this Court by judgment and order dated 9th September, 2021, vide which the judgment and order dated 15th January, 2019, passed by the Division Bench of the Delhi High Court was set aside.

6. The appellant-DAMEPL thereafter immediately filed an Execution Petition being OMP (ENF.) (COMM) No. 145 of 2021 on 12th September, 2021, before the Delhi High Court for enforcement of the Arbitral Award dated 11th May, 2017 passed by the Arbitral Tribunal. Various orders came to be passed by the learned Single Judge of the Delhi High Court in the said

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proceedings from time to time. Vide the impugned judgment and order dated 10th March, 2022, the learned Single Judge of the Delhi High Court issued certain directions with regard to the payment to be made by the respondent-DMRC towards the satisfaction of the Award. Vide the impugned judgment and order, the application(s) for impleadment filed by the Canara Bank and the Union Bank of India came to be rejected. In the said proceedings, a contention was raised on behalf of the appellant-DAMEPL that the sum, as specified under clause (a) of sub-section (7) of Section 31 of the 1996 Act, would include interest for a period from the date on which the cause of action arose to the date on which the award was made. The said contention was rejected by the learned Single Judge of the Delhi High Court by the impugned judgment and order. Being aggrieved thereby, the present appeal by way of special leave.

7. We have heard Shri Harish N. Salve, learned Senior Counsel appearing on behalf of the appellant-DAMEPL and Shri

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Parag P. Tripathi, learned Senior Counsel appearing on behalf of the respondent-DMRC.

8. Shri Harish N. Salve, learned Senior Counsel, submits that the issue is no more *res integra*. The majority judgment of this court in the case of ***Hyder Consulting (UK) Limited vs. Governor, State of Orissa through Chief Engineer***[1] has clearly held that, upon a plain reading of clauses (a) and (b) of sub-section (7) of Section 31 of the 1996 Act, it is clear that in the sum for which an Award is made, interest may be included for the pre-award period, and that for the post-award period, interest up to the rate of 18% per annum may be awarded on such sum directed to be paid by the Arbitral Tribunal. Learned Senior Counsel, therefore, submits that the amount under clause (a) of sub-section (7) of Section 31 of the 1996 Act would include the Termination Payment of Rs.2782.33 crores plus the amount of interest granted by the Arbitral Tribunal from the date of cause of action till the date of the award. As such, it is

1 (2015) 2 SCC 189

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the contention of the appellant-DAMEPL that the sum, as specified in clause (a) of sub-section (7) of Section 31 of the 1996 Act, would be an amount of Rs.4662.59 crores. It is further submitted that the sum, which is arrived at Rs.4662.59 on the correct construction of clause (a) of sub-section (7) of Section 31 of the 1996 Act, would therefore carry the interest as awarded by the Arbitral Tribunal from the date of the award till the date of payment. The learned Senior Counsel would submit that the aforesaid interpretation is the only logical interpretation. He submits that the High Court has, therefore, erred in rejecting the claim of the appellant-DAMEPL with regard to addition of the interest *pendente lite* in the sum to be arrived at under clause (a) of sub-section (7) of Section 31 of the 1996 Act.

9. Shri Parag P. Tripathi, learned Senior Counsel, on the contrary, would submit that the High Court has correctly rejected the claim of the appellant-DAMEPL. He submits that clause (a) of sub-section (7) of Section 31 of the 1996 Act itself

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begins with the phrase "unless otherwise agreed by the parties". He submits that there is a specific agreement between the parties under Article 29.8 of the Concession Agreement, with regard to payment of interest. Learned Senior Counsel submits that since there is an agreement between the parties as to how the interest would be awarded and that since the same has been awarded by the Arbitral Tribunal in accordance with the agreement, the majority judgment of this Court in the case of ***Hyder Consulting (UK) Limited*** (supra) would not be of any assistance to the case of the appellant-DAMEPL. He therefore submits that the present appeal deserves to be dismissed.

10. As already stated hereinabove, the present appeal needs to be decided in the narrow compass of interpretation of clause (a) of sub-section (7) of Section 31 of the 1996 Act.

11. Shri Harish N. Salve, learned Senior Counsel is justified in relying on the majority judgment of this Court in the case of ***Hyder Consulting (UK) Limited*** (supra). S.A. Bobde, J. in his judgment in the said case observed thus:

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"**2.** It is not possible to agree with the conclusion in *S.L. Arora case* [*State of Haryana* v. *S.L. Arora and Co.*, (2010) 3 SCC 690 : (2010) 1 SCC (Civ) 823] that Section 31(7) of the Act does not require that interest which accrues till the date of the award be included in the "*sum*" from the date of award for calculating the post-award interest. In my humble view, this conclusion does not seem to be in consonance with the clear language of Section 31(7) of the Act.

3. Sub-section (7) of Section 31 of the Act, which deals with the power of the Arbitral Tribunal to award interest, reads as follows:

> "**31.(7)(*a*)** Unless otherwise agreed by the parties, where and insofar 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.

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> **(*b*)** A sum directed to be paid by an arbitral award shall, unless the award otherwise directs, carry interest at the rate of eighteen per centum per annum from the date of the award to the date of payment."
>
> (emphasis supplied)

4. Clause (*a*) of sub-section (7) provides that where an award is made for the payment of money, the Arbitral Tribunal may include interest in the sum for which the award is made. In plain terms, this provision confers a power upon the Arbitral Tribunal while making an award for payment of money, to include interest in the sum for which the award is made on either the whole or any part of the money and for the whole or any part of the period for the entire pre-award period between the date on which the cause of action arose and the date on which the award is made. To put it differently, sub-section (7) (*a*) contemplates that an award, inclusive of interest for the pre-award period on the entire amount directed to be paid or part thereof, may be passed. The "*sum*" awarded may be the principal amount and such interest as the Arbitral Tribunal deems fit. If no interest is awarded, the "*sum*" comprises only the principal. The significant words occurring in clause (*a*) of

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sub-section (7) of Section 31 of the Act are "*the sum for which the award is made*". On a plain reading, this expression refers to the *total amount* or *sum* for the payment for which the award is made. Parliament has not added a qualification like "principal" to the word "sum", and therefore, the word "sum" here simply means "a particular amount of money". In Section 31(7), this particular amount of money may include interest from the date of cause of action to the date of the award.

5. The *Oxford Dictionary* gives the following meaning to the word "sum":

> *Sum, 'if noun'*.—A particular amount of money.
>
> *Sum, 'if verb'*.—The total amount resulting from the addition of two or more numbers, amounts, or items.

6. In *Black's Law Dictionary*, the word "sum" is given the following meaning:

> "*Sum*.—In English law—A summary or abstract; a compendium; a collection. Several of the old law treatises are called 'sum'. Lord Hale applies the term to summaries of statute law. Burrill. The sense in which the term is most commonly used is 'money'; a quantity of money or currency; any amount indefinitely, a sum of money, a small sum, or a large sum. *United*

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> *States* v. *Van Auken* [24 L Ed 852 : 96 US 366 (1878)] and *Donovan* v. *Jenkins* [52 Mont 124 : 155 P 972 at p. 973] ."

7. Thus, when used as a noun, as it seems to have been used in this provision, the word "sum" simply means "an amount of money"; whatever it may include — "principal" and "interest" or one of the two. Once the meaning of the word "sum" is clear, the same meaning must be ascribed to the word in clause (*b*) of sub-section (7) of Section 31 of the Act, where it provides that a *sum* directed to be paid by an arbitral award "*shall … carry interest …*" from the date of the award to the date of the payment i.e. post-award. In other words, what clause (*b*) of sub-section (7) of Section 31 of the Act directs is that the "sum", which is directed to be paid by the award, whether inclusive or exclusive of interest, shall carry interest at the rate of eighteen per cent per annum for the post-award period, unless otherwise ordered.

8. Thus, sub-section (7) of Section 31 of the Act provides, firstly, vide clause (*a*) that the Arbitral Tribunal may include interest while making an award for payment of money in the sum for which the award is made and further, vide clause (*b*) that the sum so directed to be made by

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the award shall carry interest at a certain rate for the post-award period.

9. The purpose of enacting this provision is clear, namely, to encourage early payment of the awarded sum and to discourage the usual delay, which accompanies the execution of the award in the same manner as if it were a decree of the court vide Section 36 of the Act.

10. In this view of the matter, it is clear that the interest, the sum directed to be paid by the arbitral award under clause (*b*) of sub-section (7) of Section 31 of the Act is inclusive of interest pendente lite.

11. At this juncture, it may be useful to refer to Section 34 CPC, also enacted by Parliament and conferring the same power upon a court to award interest on an award i.e. post-award interest. While enacting Section 34 CPC Parliament conferred power on a court to order interest "*on the principal sum adjudged*" and not on merely the "sum" as provided in the Arbitration Act. The departure from the language of Section 34 CPC in Section 31(7) of the 1996 Act is significant and shows the intention of Parliament.

12. It is settled law that where different language is used by Parliament, it is

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intended to have a different effect. In the Arbitration Act, the word "sum" has deliberately not been qualified by using the word "principal" before it. If it had been so used, there would have been no scope for the contention that the word "sum" may include "interest." In Section 31(7) of the Act, Parliament has deliberately used the word "sum" to refer to the aggregate of the amounts that may be directed to be paid by the Arbitral Tribunal and not merely the "principal" sum without interest.

13. Thus, it is apparent that vide clause (*a*) of sub-section (7) of Section 31 of the Act, Parliament intended that an award for payment of money may be inclusive of interest, and the "sum" of the principal amount plus interest may be directed to be paid by the Arbitral Tribunal for the pre-award period. Thereupon, the Arbitral Tribunal may direct interest to be paid on such "sum" for the post-award period vide clause (*b*) of sub-section (7) of Section 31 of the Act, at which stage the amount would be the sum arrived at after the merging of interest with the principal; the two components having lost their separate identities.

14. In fact this is a case where the language of sub-section (7) clauses (*a*) and (*b*) is so plain and unambiguous that no question of construction of a statutory

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> provision arises. The language itself provides that in the sum for which an award is made, interest may be included for the pre-award period and that for the post-award period interest up to the rate of eighteen per cent per annum may be awarded on such sum directed to be paid by the arbitral award."

12. Abhay Manohar Sapre, J. in his concurring judgment in the case of ***Hyder Consulting (UK) Limited*** (supra) has also agreed with the view of S.A. Bobde, J.

13. It could thus be seen that the majority view of this Court in the case of ***Hyder Consulting (UK) Limited*** (supra) is that the sum awarded may include the principal amount and such interest as the Arbitral Tribunal deems fit. It is further held that, if no interest is awarded, the "sum" comprises only the principal amount. The majority judgment held that clause (a) of sub-section (7) of Section 31 of the 1996 Act refers to the total amount or sum for the payment for which the award is made. As such, the amount awarded under clause (a) of sub-section (7) of Section 31 of the 1996 Act would include the

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principal amount plus the interest amount *pendente lite*. It was held that the interest to be calculated as per clause (b) of sub-section (7) of Section 31 of the 1996 Act would be on the total sum arrived as aforesaid under clause (a) of sub-section (7) of Section 31 of the 1996 Act. S.A. Bobde, J. in his judgment, has referred to various authorities of this Court as well as *Maxwell on the Interpretation of Statutes*. He emphasized that the Court must give effect to the plain, clear and unambiguous words of the legislature and it is not for the Courts to add or subtract the words, even though the construction may lead to strange or surprising, unreasonable or unjust or oppressive results.

14. Sub-section (7) of Section 31 of the 1996 Act is already reproduced in the judgment of S.A. Bobde, J. in the case of ***Hyder Consulting (UK) Limited*** (supra). Applying the principle of plain interpretation of the language employed by the legislature, the position that would emerge, on an analysis of clause (a) of sub-section (7) of Section 31 of the 1996 Act, is as under:

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(i) It begins with the words "Unless otherwise agreed by the parties";

(ii) where and insofar as an arbitral award is for the payment of money, the Arbitral Tribunal may include interest component in the sum for which the award is made;

(iii) the interest may be at such rate as the Arbitral Tribunal deems reasonable;

(iv) the interest may be on the whole or any part of the money;

(v) the interest may be 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.

15. It could thus be seen that the part which deals with the power of the Arbitral Tribunal to award interest, would operate if it is not otherwise agreed by the parties. If there is an agreement between the parties to the contrary, the Arbitral

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Tribunal would lose its discretion to award interest and will have to be guided by the agreement between the parties. The provision is clear that the Arbitral Tribunal is not bound to award interest. It has a discretion to award the interest or not to award. It further has a discretion to award interest at such rate as it deems reasonable. It further has a discretion to award interest on the whole or any part of the money. It is also not necessary for the Arbitral Tribunal to award interest for the entire period between the date on which the cause of action arose and the date on which the award is made. It can grant interest for the entire period or any part thereof or no interest at all.

16. We find that in the present case, the words "unless otherwise agreed by the parties" would assume significance. The said words fell for consideration before this Court in the case of ***N.S. Nayak & Sons vs. State of Goa***[2]. This Court in the said case had an occasion to consider the scope of the

2 (2003) 6 SCC 56

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phrase "unless otherwise agreed by the parties" in various provisions of the 1996 Act. This Court observed thus:

> "*14.* ... The phrase 'unless otherwise agreed by the parties' used in various Sections, namely, 17, 21, 23(3), 24(1), 25, 26, 29, 31, 85(2)(*a*), etc. indicates that it is open to the parties to agree otherwise. During the arbitral proceedings, right is given to the parties to decide their own procedure. So if there is an agreement between the parties with regard to the procedure to be followed by the arbitrator, the arbitrator is required to follow the said procedure. Reason being, the arbitrator is appointed on the basis of the contract between the parties and is required to act as per the contract. However, this would not mean that in appeal parties can contend that the appellate procedure should be as per their agreement."

17. This Court in the case of ***Sree Kamatchi Amman Constructions vs. Divisional Railway Manager (Works), Palghat and others***[3] had an occasion to directly consider the aforesaid phrase as employed by the legislature in sub-section (7) of Section 31 of the 1996 Act. R.V. Raveendran, J. in the said case observed thus:

3 (2010) 8 SCC 767

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> "*19.* Section 31(7) of the new Act by using the words '*unless otherwise agreed by the parties*' categorically clarifies that the arbitrator is bound by the terms of the contract insofar as the award of interest *from the date of cause of action to the date of award*. Therefore, where the parties had agreed that no interest shall be payable, the Arbitral Tribunal cannot award interest between the date when the cause of action arose to the date of award."

18. If clause (a) of sub-section (7) of Section 31 of the 1996 Act is given a plain and literal meaning, the legislative intent would be clear that the discretion with regard to grant of interest would be available to the Arbitral Tribunal only when there is no agreement to the contrary between the parties. The phrase "unless otherwise agreed by the parties" clearly emphasizes that when the parties have agreed with regard to any of the aspects covered under clause (a) of sub-section (7) 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

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Arbitral Tribunal would have a discretion to exercise its powers under clause (a) of sub-section (7) of Section 31 of the 1996 Act. The discretion is wide enough. It may grant or may not grant interest. It may grant interest for the entire period or any part thereof. It may also grant interest on the whole or any part of the money.

19. If the contention as raised on behalf of the appellant-DAMEPL is to be accepted, the phrase "unless otherwise agreed by the parties" would be rendered redundant and would become otiose.

20. It will be apposite to refer to the following observation of this Court in the case of ***Reserve Bank of India vs. Peerless General Finance and Investment Co. Ltd. and others***[4]:

> "**33.** Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation

4 (1987) 1 SCC 424

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> match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place. It is by looking at the definition as a whole in the setting of the entire Act and by reference to what preceded the enactment and the reasons for it that the Court construed the expression "Prize Chit" in *Srinivasa* [(1980) 4 SCC 507 : (1981) 1 SCR 801 : 51 Com Cas 464] and we find no reason to depart from the Court's construction."

21. It could thus be seen that each and every word and each and every phrase mentioned in the provision will have to be

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given effect to. Statutes have to be construed so that every word has a place and everything is in its place.

22. An important aspect that has to be taken into consideration is that the 1996 Act itself emphasizes on party autonomy. As such, the legislative intent is clear that when the parties have agreed to the contrary on any of the aspects as mentioned in clause (a) of sub-section (7) of Section 31 of the 1996 Act, the Arbitral Tribunal will cease to have any discretion and would be bound by an agreement between the parties.

23. As already discussed hereinabove, any interpretation which would render the phrase "unless otherwise agreed by the parties" otiose or redundant will have to be avoided. It will be apposite to refer to the following observations of the Constitution Bench of this Court in the case of ***Hardeep Singh vs. State of Punjab and others***[5]:

> "**44.** No word in a statute has to be construed as surplusage. No word can be rendered ineffective or purposeless.

5 (2014) 3 SCC 92

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Courts are required to carry out the legislative intent fully and completely. While construing a provision, full effect is to be given to the language used therein, giving reference to the context and other provisions of the statute. By construction, a provision should not be reduced to a "dead letter" or "useless lumber". An interpretation which renders a provision otiose should be avoided otherwise it would mean that in enacting such a provision, the legislature was involved in "an exercise in futility" and the product came as a "purposeless piece" of legislation and that the provision had been enacted without any purpose and the entire exercise to enact such a provision was "most unwarranted besides being uncharitable". (Vide *Patel Chunibhai Dajibha* v. *Narayanrao Khanderao Jambekar* [AIR 1965 SC 1457] , *Martin Burn Ltd.* v. *Corpn. of Calcutta* [AIR 1966 SC 529] , *M.V. Elisabeth* v. *Harwan Investment and Trading (P) Ltd.* [1993 Supp (2) SCC 433 : AIR 1993 SC 1014] , *Sultana Begum* v. *Prem Chand Jain* [(1997) 1 SCC 373] , *State of Bihar* v. *Bihar Distillery Ltd.* [(1997) 2 SCC 453 : AIR 1997 SC 1511] , *Institute of Chartered Accountants of India* v. *Price Waterhouse* [(1997) 6 SCC 312] and *South Central Railway Employees Coop. Credit Society Employees' Union* v. *Registrar of Coop.*

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> *Societies* [(1998) 2 SCC 580 : 1998 SCC (L&S) 703 : AIR 1998 SC 703] .)"

24. If the interpretation, as placed by the appellant-DAMEPL is to be accepted, the phrase "unless otherwise agreed by the parties" would be reduced to a "dead letter" or "useless lumber". In our considered view, such an interpretation would be wholly impermissible.

25. It appears from the facts in the case of ***Hyder Consulting (UK) Limited*** (supra) that there was no agreement between the parties with regard to payment of interest. Such is not the case here. It will be relevant to refer to Article 29.8 of the Concession Agreement, which reads thus:

> "29.8 **Termination Payments**: The Termination Payment pursuant to this Agreement shall become due and payable to the Concessionaire by DMRC within thirty days of a demand being made by ·the Concessionaire with the necessary particulars duly certified by the Statutory Auditors. If DMRC fails to disburse the full Termination

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> Payment within 30 (thirty) days, the amount remaining unpaid shall be disbursed along with interest at an annualised rate of SBI PLR plus two per cent for the period of delay on such amount."

26. It could thus clearly be seen that as per Article 29.8 of the Concession Agreement, the Termination Payment would become due and payable to the Concessionaire by DMRC within thirty days of a demand being made by the Concessionaire. It further provides that if the DMRC fails to disburse the full Termination Payment within 30 days, the amount remaining unpaid shall be disbursed along with interest at an annualized rate of SBI PLR plus two per cent for the period of delay on such amount. It can thus clearly be seen that Article 29.8 of the Concession Agreement deals with payment of interest on Termination Payment amount.

27. The Arbitral Tribunal rightly construing the Concession Agreement has directed thus:

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"129. **Therefore, the Termination Payment to DAMEPL works out to Rs. 983.02 +Rs. 1260.73 +Rs. 538.58 crores =Rs. 2782.33 crores.**

As regards rate of interest on the Termination payment, the stipulation of Article 29.8 of CA is at an annualized rate of SBI PLR +2%. We have noted from the financial documents of DAMEPL (Pg 299 of CD11-Supplementary reply of DMRC dated 22.2.2014 to the Counter Claim of the Respondent) that the secured loan taken by DAMEPL carries the rate of interest of 12.75% on Rupee Term Loan and is in the range of 4.83% to 5.6% for Foreign Currency Loan. Although the rates of interest on loans taken by DAMEPL are lower than SBI PLR +2%, we are of the opinion that it is beyond the competence of the Tribunal to change or alter or modify the provisions of CA. **As such, we decide that the Termination payment will be as per the provisions of Article 29.8 of CA and the interest on the Termination payment will accrue from 7.8.2013 (i.e. the date 30 days after the demand of Termination payment by DAMEPL on 08.07.2013). In terms of Article 29.9 of CA, this amount shall be paid by DMRC by way of credit to**

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> **the Escrow Account, details of which are available in Annexure CC-4 of the Counter Claim. We award accordingly.**

28. It is thus clear that the Arbitral Tribunal has directed that the Termination payment would be as per the provisions of the Concession Agreement and the interest on the Termination payment would accrue from 7th August, 2013 (i.e., the date 30 days after the demand of Termination payment by DAMEPL on 8th July, 2013). It is pertinent to note that though the Arbitral Tribunal has found that the rates of interest on loans taken by the appellant- DAMEPL are lower than SBI PLR + 2%, it has observed that it was beyond the competence of the Arbitral Tribunal to change or alter or modify the provisions of the Concession Agreement. The Arbitral Tribunal, therefore, has granted interest at an annualized rate of SBI PLR + 2%, though it had found that the rate of interest on which the loan was taken by the appellant-DAMEPL was on the lower side. The Arbitral Tribunal, therefore, has rightly given effect to the

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specific agreement between the parties with regard to the rate of interest. We find that the arbitral award has been passed in consonance with the provisions as contained in clause (a) of sub-section (7) of Section 31 of the 1996 Act and specifically, in consonance with the phrase "unless otherwise agreed by the parties".

29. As already discussed herein above, from the majority judgment of S.A. Bobde and Abhay Manohar Sapre, JJ. in the case of ***Hyder Consulting (UK) Limited*** (supra), it would appear that the situation, where there was an agreement between the parties on the point of payment of interest, did not fall for consideration in the said case.

30. We may gainfully refer to the three-judge Bench judgment of this Court in the case of ***Union of India and others vs. Dhanwanti Devi and others***[6], wherein this Court has observed thus:

6 (1996) 6 SCC 44

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> "**9.** .....Every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there is not intended to be exposition of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found..."

31. It can thus clearly be seen that every judgment must be read as applicable to the particular facts proved, or assumed to be proved. The generality of the expressions which are found in a judgment cannot be considered to be intended to be exposition of the whole law. They will have to be governed and qualified by the particular facts of the case in which such expressions are to be found.

32. It will also be apposite to refer to the following observation of another three-Judge Bench of this Court in the case of ***The Regional Manager and another vs. Pawan Kumar Dubey***[7]:

> "**7.** ......Even where there appears to be some conflict, it would, we think, vanish when the ratio decidendi of each case is

7 (1976) 3 SCC 334

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> correctly understood. It is the rule deducible from the application of law to the facts and circumstances of a case which constitutes its ratio decidendi and not some conclusion based upon facts which may appear to be similar. One additional or different fact can make a world of difference between conclusions in two cases even when the same principles are applied in each case to similar facts."

33. This Court has held that the ratio decidendi is the rule deducible from the application of law to the facts and circumstances of a case which constitutes its ratio decidendi and not some conclusion based upon facts which may appear to be similar. It has been held that one additional or different fact can make a world of difference between conclusions in two cases even when the same principles are applied in each case to similar facts.

34. As discussed hereinabove, in the case of ***Hyder Consulting (UK) Limited*** (supra), there was no agreement between the parties with regard to the payment of interest and as such, the phrase "unless otherwise agreed by the parties"

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did not fall for consideration in the said case. As a caution, we have also gone through the judgment of the High Court from which the appeal arose to this Court in the case of ***Hyder Consulting (UK) Limited*** (supra). A perusal of the said judgment would also reveal that there was no agreement between the parties with regard to payment of interest. As such, in the case of ***Hyder Consulting (UK) Limited*** (supra), this Court did not have an occasion to consider the import of the phrase "unless otherwise agreed by the parties".

35. 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. The findings recorded by the Arbitral Tribunal have reached finality in view of the judgment and order dated 9th September, 2021, passed by this Court in Civil Appeal No.5627 of 2021 [arising out of Special Leave Petition (Civil) No.4115 of 2019].

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36. We therefore, see no error in the observations of the learned Single Judge of the Delhi High Court in paragraph 30 of the impugned judgment and order dated 10th March, 2022, passed in Execution Petition being OMP (ENF.) (COMM) No. 145 of 2021.

37. In the result, we find no merit in the present appeal. The appeal is accordingly dismissed.

38. Pending application(s), if any, shall stand disposed of. There shall be no order as to costs.

..............................J.
[L. NAGESWARA RAO]

..............................J.
[B.R. GAVAI]

NEW DELHI;
MAY 05, 2022.