

CASE NO.:

Appeal (civil) 3586 of 1984
Appeal (civil) 710-711 of 1981
Appeal (civil) 6808-09 of 1983
Appeal (civil) 10649 of 1983
Appeal (civil) 779 of 1982
Appeal (civil) 2723 of 1981

PETITIONER:

EXECUTIVE ENGINEER, DHENKANAL MINOR IRRIGATION DIVISION, ETC. ETC.

Vs.

RESPONDENT:

N.C.BUDHARAJ (DEAD) BY L.RS. ETC. ETC.

DATE OF JUDGMENT: 10/01/2001

BENCH:

D.P.Mohapatro

JUDGMENT:

L.....I.....T.....T.....T.....T.....T.....T...J
J U D G M E N T

D.P.MOHAPATRA, J.

I have had the privilege of reading the draft judgment prepared by my learned brother Justice Doraiswamy Raju. He has come to the conclusion that the arbitrator appointed with or without intervention of Court, has jurisdiction to award interest on the sums found due and payable, for the pre-reference period, in the absence of any specific stipulation or prohibition in the contract to claim or grant any such interest. With respect, I am unable to agree with the said conclusion.

This case stood referred by a bench of three learned Judges of this Court by the order dated 29.10.1999 for consideration by a larger Bench. In paragraph 15 of the said order the question to be considered has been formulated as : "In the absence of any prohibition to claim or grant interest under the arbitration agreement whether the arbitrator has no jurisdiction to award interest for the pre-reference period under the general law or on equitable principles although such claim may not strictly fall within the provisions of the Interest Act, 1839. ?"

From the discussions in the reference order it appears that it was urged by Mr. Anil Divan, learned senior counsel appearing for the respondents that in view of the judgments of this Court in Secy. Irrigation Deptt. Govt. of Orissa vs. G.C.Roy (1992 (1) SCC 508) (hereinafter referred to as 'G.C.Roy case'), Executive Engineer (Irri.) vs. Abhaduta Jena 1988 (1) SCC 418 (hereinafter referred to as 'Abhaduta Jena's case') and in the case of State of Orissa vs. B.N.Agarwalla (1997) 2 SCC 469, requires reconsideration. The question of competence of an arbitrator to award interest has engaged the attention of this Court in umpteen

cases. The claim of interest can be broadly split up into 3 periods - a) for the period before the arbitrator enters upon the reference, in other words, pre-reference period; (b) for the period during which the proceeding is pending before the arbitrator which is otherwise called pendente lite period; (c) for the period from the date of the award till the award is made rule of the court. The question to be considered in the present case is confined to the jurisdiction of the arbitrator to award interest for the pre-reference period only. After hearing the learned counsel appearing for the appellants and the respondents it appears to me that the moot question to be answered by this Bench is whether the decision in Abhaduta Jena case (supra) holding that the arbitrator has no competence to award interest for the pre-reference period unless any of the three conditions namely - 1) if the agreement between the parties entitles the arbitrator to award interest; 2) if there is a usage of trade having the force of law for award of interest and 3) if there are other provisions of the substantive law enabling the award of interest; requires re-consideration, particularly in view of the decision of the Constitution Bench in G.C.Roy case (supra). Therefore it will be convenient to notice at the outset the principles of law and the reasons which persuaded the learned Judges in Abhaduta Jena case to hold as noted above. Therein this Court took note of the important changes brought in by the Interest Act, 1978 particularly the inclusion of an arbitrator in the definition of section 2(a) which was absent in the Interest Act of 1839. This Court also took note of the position that section 34 of the Civil Procedure Code applies to arbitration in a suit for the reason that where a matter is referred to arbitration in a suit the arbitrator will have all the powers of the Court in deciding the dispute and that section 34 does not otherwise apply to arbitration as arbitrators are not 'courts' within the meaning of section 34 CPC. As O. Chinappa Reddy, J speaking for the Court has observed "again we must look elsewhere to discover the right of the arbitrator to award interest before the institution of the proceedings in cases where the proceedings had concluded before the commencement of the Interest Act, 1978". In this regard the following observations in paragraph 4 of the judgment may be noticed:

"It is important to notice at this stage that both the Interest Act 1839 and the Interest Act of 1978 provide for the award of interest up to the date of the

institution of the proceedings. Neither the Interest Act of 1839 nor the Interest Act of 1978 provides for the award of pendente lite interest. We must look elsewhere for the law relating to the award of interest pendente lite. This, we find, provided for in Section 34 of the Civil Procedure Code in the case of courts. Section 34, however, applies to arbitrations in suit for the simple reason that where a matter is referred to arbitration in a suit, the arbitrator will have all the powers of the court in deciding the dispute. Section 34 does not otherwise apply to arbitrations as arbitrators are not courts within the meaning of Section 34 Civil Procedure Code. Again, we must look elsewhere to discover the right of the arbitrator to award interest before the institution of the proceedings, in cases where the proceedings had concluded before the commencement of the Interest Act of 1978. While under the Interest Act of 1978 the expression 'court' was defined to

include an arbitrator, under the Interest Act of 1839 it was not so defined. The result is that while in cases arising after the commencement of Interest Act of 1978 an arbitrator has the same power as the court to award interest up to the date of institution of the proceedings in cases which arose prior to the commencement of the 1978 Act the arbitrator has no such power under the Interest Act of 1839. It is, therefore necessary, as we said, to look elsewhere for the power of the arbitrator to award interest up to the date of institution of the proceedings. Since the arbitrator is required to conduct himself and make the award in accordance with law we must look to the substantive law for the power of the arbitrator to award interest before the commencement of the proceedings. If the agreement between the parties entitles the arbitrator to award interest no further question arises and the arbitrator may award interest.

Similarly, if there is a usage of trade having the force of law the arbitrator may award interest. Again if there are any other provisions of the substantive law enabling the award of interest the arbitrator may award interest. By way of an illustration, we may mention Section 80 of the Negotiable Instruments Act as a provision of the substantive law under which the court may award interest even in a case where no rate of interest is specified in the promissory note or bill of exchange. We may also refer Section 61(2) of the Sale of Goods Act which provides for the award of interest to the seller or the buyer as the case may be under certain circumstances in suits filed by them. We may further cite the instance of the non- performance of a contract of which equity could give specific performance and to award interest. We may also cite a case where one of the parties is forced to pay interest to a third party, say on an overdraft, consequent on the failure of the other party to the contract not fulfilling the obligation of paying the amount due to them. In such a case also equity may compel the payment of interest. Loss of interest in the place of the right to remain in possession may be rightfully claimed in equity by the owner of a property who has been dispossessed from it."

(emphasis supplied)

This Court discussed a number of decisions of the Privy Council and Supreme Court including the case of Bengal Nagpur Railway Co. Ltd. V. Ruttanji Ramji (1965 IA 66); Seth Thawardas Pherumal V. Union of India (1955) 2 SCR 48 : AIR 1955 SC 468; Nachiappa Chettiar vs. Subramaniam Chettiar (1962) 2 SCR 209; Satinder Singh vs. Amrao Singh (1961) 3 SCR 676; Union of India Vs. Watkins Mayor & Co. AIR 1966 SC 275; Union of India Vs. West Punjab Factories (1966) 1 SCR 580: AIR 1966 SC 395; M/s Ashok Construction Co. vs. Union of India (1971) 3 SCC 66 and State of M.P. Vs. M/s Saith & Skelton Pvt Ltd. (1972) 3 SCR 233: (1972) 1 SCC 702: AIR1972 SC 1507.

After discussing in detail the facts and the principles laid down in the decided cases this Court summed up the position in the following words:

"15. As a result of the discussion of the various cases, we see that Bengal Nagpur Railway Co. Ltd. v. Ruttanji Ramji, Union of India, v. West Punjab Factories and Union of India v. Watkins & Co. were cases of award of

interest not by an arbitrator, but by the Court. It was laid down in those three cases that interest could not be awarded for the period prior to the suit in the absence of an agreement for the payment of interest or any usage of trade having the force of law or any provision of the substantive law entitling the plaintiff to recover interest. Interest could also be awarded by the court under the Interest Act if the amount claimed was a sum certain payable at a certain time by virtue of a written instrument. In

regard to pendente lite interest, the provisions of the Civil Procedure Code governed the same.

16. The question of award of interest by an arbitrator was considered in the remaining cases to which we have referred earlier. *Nachiappa Chettiar v. Subramaniam Chettiar*, *Satinder Singh v. Amrao Singh*, *Firm Madanlal Roshanlal Mahajan v. Hukumchand Mills Ltd.*, *Union of India v. Bungo Steel Furniture Pvt. Ltd.* *Ashok Construction Co. v. Union of India* and *State of Madhya Pradesh v. M.s Saith & Skelton Pvt. Ltd.* were all cases in which the reference to arbitration was made by the court, of all the disputes in the suit. It was held that the arbitrator must be assumed in those circumstances to have the same power to award interest as the court. It was on that basis that the award of pendente lite interest was made on the principle of Section 34 Civil Procedure Code in *Nachiappa Chettiar v. Subramaniam Chettiar*, *Firm Madanlal Roshanlal Mahajan v. Hukumchand Mills Ltd.*, *Union of India v. Bungo Furniture Pvt. Ltd.* and *State of Madhya Pradesh v. M/s Saith & Skelton Pvt. Ltd.* In regard to interest prior to the suit, it was held in these cases that since the Interest Act, 1839 was not applicable, interest could be awarded if there was an agreement to pay interest or a usage of trade having the force of law or any other provision of substantive law entitling the claimant to recover interest. Illustrations of the provisions of substantive law under which the arbitrator could award interest were also given in some of the cases. It was said, for instance, where an owner was deprived of his property, the right to receive interest took the place of the right to retain possession, and the owner of immovable property who lost possession of it was, therefore, entitled to claim interest in the place of right to retain possession. It was further said that it would be so

whether possession of immovable property was taken away by private treaty or by compulsory acquisition. Another instance where interest could be awarded was under Sec. 61(2) of the Sale of Goods Act which provided for the award of interest to the seller or the buyer, as the case may be, under the circumstances specified in that section.

17. Section 80 of the Negotiable Instruments Act was mentioned as an instance of a provision of the substantive law under which interest prior to the institution of the proceedings could be awarded. Interest could also be awarded in cases of non-performance of a contract of which equity could give specific performance. *Seth Thawardas Pherumal* was a case of direct reference to arbitration without the intervention of a court. Neither the Interest Act, 1839 nor the Civil Procedure Code applied as an arbitrator was not a court. Interest could, therefore, be awarded only if there was an agreement to pay interest or a

usage of trade having the force of law or some other provision of the substantive law which entitled the plaintiff to receive interest. In that case, interest had been awarded on the ground that it was reasonable to award interest and the court, therefore, held that the arbitrator was wrong in awarding the interest."

(emphasis supplied)

The ultimate conclusions reached by the Court were summed up in these words:

"In regard to pendente lite interest, that is, interest from the date of reference to the date of the award,

the claimants would not be entitled to the same for the simple reason that the arbitrator is not a court within the meaning of Section 34 of the CPC, nor were the references to arbitration made in the course of suits. In the remaining cases which arose before the commencement of the Interest Act, 1978, the respondents are not entitled to claim interest either before the commencement of the proceedings or during the pendency of the arbitration. They are not entitled to claim interest for the period prior to the commencement of the arbitration proceedings for the reason that the Interest Act, 1839 does not apply to their cases and there is no agreement to pay interest or any usage of trade having the force of law or any other provision of law under which the claimants were entitled to recover interest. They are not entitled to claim pendente lite interest as the arbitrator is not a court nor were the references to arbitration made in suits." (emphasis supplied)

The Constitution Bench of this Court in G.C.Roy case (supra) considered the correctness of the decision in Abhaduta Jena case (supra) so far as award of pendente lite interest is concerned. Indeed while stating the two grounds on which the award before the Court was challenged it was stated "(2) the arbitrator had no jurisdiction to award pendente lite interest". The conclusion on that point was stated in paragraphs 44-45 of the judgment in the following words:

"44. Having regard to the above consideration, we think that the following is the correct principle which should be followed in this behalf:

Where the agreement between the parties does not prohibit grant of interest and where a party claims interest and that dispute (along with the claim for principal amount or independently) is referred to the arbitrator, he shall have the power to award interest pendente lite. This is for the reason that in such a case it must be presumed that interest was an implied term of the agreement between the parties and therefore when the parties refer all their disputes - or refer the dispute as to interest as such - to the arbitrator, he shall have the power to award interest. This does not mean that in every case the arbitrator should necessarily award interest pendente lite. It is a matter within his discretion to be exercised in the light of all the facts and circumstances of the case, keeping the ends of justice in view.

45. For the reasons aforesaid we must hold that the decision in Jena, insofar as it runs counter to the above proposition, did not lay down correct law."

In the present proceedings we are not concerned with the competence of an arbitrator to award pendente lite interest. From the discussion in the judgment in G.C. Roy case (supra) it is clear that the Constitution Bench confined its consideration to the question of pendente lite interest only. Therefore, this decision can be of little assistance in deciding the question raised in the present proceedings which relates to power of an arbitrator to award interest for the pre-reference period. A decision is an authority on the question that is raised and decided by the Court. It cannot be taken as an authority on a different question though in some cases the reason stated therein may have a persuasive value.

A Bench of three learned Judges of this Court in the case of Jugal Kishore Prabhatilal Sharma v. Vijayendra Prabhatilal Sharma (1993) 1 SCC 114 considered the question of power of an arbitrator to award interest for pre-reference period in a case where reference of a dispute to arbitrator was made prior to coming into force of the Interest Act, 1978. The Bench had occasion to consider the decision in Abhaduta Jena case (supra) and also G.C.Roy case (supra). The Bench rejected the contention that the decision in Abhaduta Jena case had been overruled in G.C. Roy case on the aspect of award of interest for pre-reference period also. B.P. Jeevan Reddy, J., in his concurring judgment specifically dealt with the question. The relevant portions of the judgment are quoted hereunder: "During the course of arguments, two different interpretations were placed upon the principles enunciated by the Constitution Bench in Secretary

Irrigation Department v. G.C.Roy. On one hand it was contended, relying upon the first of the five principles set out in para 43 that the said decision lays down that even for the pre-reference period, interest can be granted in all cases and that the earlier decision of this Court in Executive Engineer (Irrigation), Balimela v. Abhaduta Jena has been overruled in that behalf as well. On the other side, it was contended that it was not so and that so far as the pre-reference period is concerned, the Constitution Bench decision does not say anything contrary to what was said in Jena. It is in view of the said contentions that I thought it appropriate to clarify the matter since I was the member of the Bench which decided Secretary, Irrigation Department v. G.C.Roy.

36. The decision in G.C.Roy was concerned only with the power of arbitrator to award interest pendente lite. It was not concerned with his power to award interest for the pre-reference period. This was made clear at more than one place in the judgment. In para 2 it is stated that reference to the Constitution Bench was only for deciding the question whether the decision in Jena was correct insofar as it held that arbitrator has no power to award interest pendente lite. In para 8 it is stated (SCC pp.514-15) :

"Generally, the question of award of interest by the

arbitrator may arise in respect of three different period, namely : (I) for the period commencing from the date of dispute till the date the arbitrator enters upon the reference; (ii) for the period commencing from the date of the arbitrator's entering upon reference till the date of making the award; and (iii) for the period commencing from the date of making of the

award till the date the award is made the rule of the court or till the date of realisation, whichever is earlier. In the appeals before us

we are concerned only with the second of the three aforementioned periods" (emphasis supplied)

A Bench of two learned Judges of this Court in the case of State of Orissa Vs. B.N.Agarwala (1993) 1 SCC 140) considered the question relating to the power of the arbitrator to award interest for the pre-reference period. While on behalf of the appellant the contention was raised that the arbitrator has no power to award interest for pre-reference period relying on the decision in Abhaduta Jena case (supra); the contention on behalf of the respondent was that the said decision was no longer good law in view of the Constitution Bench decision in G.C.Roy case (supra). This Court also declined to refer the matter to a larger Bench. The relevant observations in para 10 of the Judgment are quoted hereunder : "We cannot agree with Shri Bhagat. Both of us were members of the Constitution Bench which decided G.C.Roy. It was confined to the power of the arbitrator to award interest pendente lite. It did not pertain to nor did it pronounce upon the power of the

Arbitrator to award interest for the period prior to his entering upon the reference (pre-reference period). This very aspect has been clarified by one of us (B.P.Jeevan Reddy,J.) in his concurring order in Jugal Kishore Prabhatilal Sharma v. Vijayendra Prabhatilal Sharma. Accordingly, we hold following the decision in Jena that the arbitrator had no power to award interest for the pre-reference period in this case inasmuch as the award was made prior to coming into force of the Interest Act, 1978 (The Interest Act, 1978 came into force with effect from August 19, 1981). So far as interest for the period during which the arbitration proceedings were pending (pendente lite interest) is concerned, the arbitrator does have the power to award the same as held in G.C.Roy. A request is made by Shri Bhagat to refer the matter to a larger Bench to decide the question relating to the power of the arbitrator to award interest for the pre-reference period even in cases where the award is made before the coming into force of the Interest Act, 1978. Jena was decided by a Bench of three Judges. We do not also feel persuaded to refer the matter to a larger Bench." (emphasis supplied)

Again a Bench of three learned Judges in the case of State of Orissa vs. B.N.Agrawala (1997) 2 SCC 469 had occasion to deal with the question whether the decision in Abhaduta Jena case (supra) was overruled in entirety in the decision of the Constitution Bench in G.C.Roy case (supra). This Court held that the decision in Abhaduta Jena case with

regard to award of interest for pre-reference period was not overruled in G.C. Roy case. The relevant observations made in paragraph 12 of the judgment read as follows: "The perusal of the aforesaid passages clearly shows that Abhaduta Jena case, was not overruled in its entirety by the decision in G.C.Roy case. It is only with regard to the award of pendente lite interest that the Constitution Bench came to a conclusion which was contrary to the one arrived at in Abhaduta Jena case with regard to award of interest for pre-reference period was not overruled in G.C.Roy case."

On the question whether the arbitrator had jurisdiction to award pre-reference interest in case which arose prior to the applicability of the Interest Act, 1978 this Court held : "With regard to those cases pertaining to the period prior to the applicability of the Interest Act, 1978, in the absence of any substantive law, contract or usage, the arbitrator has no jurisdiction to award interest."

In the case of Seth Thawardas Pherumal vs. Union of India (supra) a Bench of three learned Judges of this Court considered the question of validity of the award of interest by the arbitrator in the light of the provisions of the Interest Act, 1839 and section 34 of the CPC. The views of the Court on that aspect were expressed in the following words:

"The arbitrator held - The contractor's contention that his claims should have been settled by January 1948 is, in my opinion reasonable. I therefore award interest at 6% for 16 months on the total amount of the award given i.e. Rs.17,363."

Then the arbitrator sets out the amounts awarded under each head of claim. A perusal of them shows that each head relates to a claim for an unliquidated sum. The Interest Act, 1839 applies as interest is not otherwise payable by law in this kind of case (see Bengal Nagpur Ry. Co. v. Ruttanji Ramji but even if it be assumed that an arbitrator is a "court" within the meaning of that Act, (a fact that by no means appears to be the case), the following among other conditions must be fulfilled before interest can be awarded under the Act:-

- (1) there must be a debt or a sum certain;
- (2) it must be payable at a certain time or otherwise;
- (3) these debts or sums must be payable by virtue of some written contract at a certain time;
- (4) there must have been a demand in writing stating that interest will be demanded from the date of the demand.

Not one of these elements is present, so the arbitrator erred in law in thinking that he had the power to allow interest simply because he thought the demand was reasonable."

In the case of Union of India vs. West Punjab Factories Ltd. (supra) a Constitution Bench of this Court

considered the question of an award of interest for a period prior to filing of the suit and held that in the absence of any usage or contract, expressed or implied, or of any provision of law to justify the award of interest it is not possible to award interest by way of damages, and therefore, no interest should have been awarded in the present two suits upto the date of the filing of either of the suit. The relevant observations on that aspect read as follows: "The next contention is that no interest could be awarded for the period before the suit on the amount of damages decreed. Legal position with respect to this is well-settled : (see Bengal Nagpur Railway co. Limited v. Ruttanji Ramji and others). That decision of the Judicial Committee was relied upon by this Court in Seth Thawardas Pherumal v. The Union of India. The same view was expressed by this Court in Union of India v. A.L. Rallia Ram. In the absence of any usage or contract, express or implied, or of any provision of law to justify the award of interest, it is not possible to award interest by way of damages. Also see recent decision of this Court in Union of India v. Watkins Mayer & Company. In view of these decisions no interest could be awarded for the period upto the date of the suit and the decretal amount in the two suits will have to be reduced by the amount of such interest awarded." (Emphasis supplied)

The discussions in the decisions referred to in the foregoing paragraphs show the conspectus of the views expressed on the question of competence of an arbitrator to award interest for a period before he enters upon a reference. The question has been examined in the light of the ratio in Abhaduta Jena case (supra) even after the Constitution Bench decision in G.C.Roy case (supra). The consistent view taken by this Court is that the decision in Abhaduta Jena case, so far as it relates to the aspect of pre-reference interest has not been overruled by the Constitution Bench. The question to be considered is whether the decision in Abhaduta Jena case should now be overruled on that aspect also. The contention was advanced before us by Shri Anil Divan learned senior counsel for the respondent that though Abhaduta Jena case has not been expressly overruled on this aspect by the decision in G.C.Roy case the reasons given in the judgment for overruling Abhaduta Jena on the point of pendente lite interest should be applied in the present case and the said decision should be overruled on the aspect of pre-reference interest also. At the cost of repetition I may state here that this contention was not accepted by this Court in Jugal Kishore Prabhatilal Sharma & Ors. v. Vijayendra Prabhatilal Sharma and another (supra), State of Orissa v. B.N. Agarwala (supra), State of Orissa v. B.N. Agarwala (1997) 2 SCC 469 (supra). In my view this contention cannot be accepted for the reason that the two periods, the period during which the proceeding was pending before the arbitrator (pendente lite) and the period before the arbitrator entered upon the reference (pre-reference) stand on different footing. While the former refers to a period when the arbitrator was seized of the matter for adjudication, the latter refers to the period before he (arbitrator) came into the picture. Further during the period when the arbitrator is seized of the proceeding the parties are aware of the claims made by the applicant against the opposite party and the matter is pending

adjudication; but during the pre-reference period neither the claims are crystallized nor has the opposite party any notice that it may be required to pay certain amount to the claimant depending on the adjudication of the dispute by the Arbitrator. In Abhaduta Jena case (supra) this Court held that the arbitrator has no competence to award interest for a period prior to reference unless agreement between the parties entitles the arbitrator to award interest or there is a usage or trade having the force of law for award of interest or there is any other provision of the substantive law enabling the award of interest. In that decision as I read it, this Court has emphasised the position that the claim for interest for pre-reference period can be made only if there is a firm basis giving the claimants a cause of action for claim of such interest and in the absence of such basis for such claim an arbitrator is not competent to award interest. The position is well-settled that arbitrator is a creature of agreement between the parties. He is vested with the power of adjudication of disputes in terms of such agreement. He has to act in accordance with law. Though he discharges the functions of a Court while adjudicating the dispute raised by the parties he cannot be said to be a substitute for the Court in all respects. An arbitrator is not bound to follow the strict procedure applicable in a case before the Court. In many cases the arbitrator, though nominated as a judge by the parties, may not have the requisite experience in the field of law which a presiding officer of a Court possesses. Therefore, it is necessary that in judging the claim of interest for pre-reference period he should ascertain whether such claim is permitted under the terms of the contract between the parties or there is a usage of trade having force of law in support of such claim or there is any other provision of the substantive law enabling the award of such interest. In Abhaduta Jena case this court did not rule that an arbitrator was not competent to award interest for pre-reference period in any circumstance. This court only held that award of such interest was not permissible unless any one of the conditions laid down in the decision is satisfied. The ratio of Abhaduta Jena case (supra) is based on sound legal principles which have been tested in the subsequent decisions in the light of the principles enunciated in G.C.Roy case (supra) also. In this connection I may notice another contention which was raised by Shri Anil Divan that the jurisdiction to award interest for pre-reference period will only compel the claimant to a civil suit for interest and that would result in multiplicity of proceedings. This contention is based on the assumption that a Civil Court can award interest for a period prior to the institution of the suit without being satisfied that any of the conditions laid down in Abhaduta Jena's case is satisfied. This assumption, in my view is incorrect. The plaintiff in a suit has to base his claim on a cause of action in law and in the absence of a firm basis in law the Court cannot entertain such a claim. The plaintiff has to lay a firm basis for the claim in the pleading. That position has only been reiterated by this Court in Abhaduta Jena case (supra).

On the discussions in the foregoing paragraphs I am of the view that the decision in Abhaduta Jena case (supra) lays down the correct position of law and does not require reconsideration. An arbitrator has no competence to award interest for the pre-reference period unless any of the

conditions namely - (1) if the agreement between the parties entitles the arbitrator to award interest; (2) if there is a usage of trade having the force of law for award of interest, and (3) if there are other provisions of the substantive law enabling the award of interest, is satisfied. Therefore, the question formulated in the reference order is answered in the negative. Accordingly, the appeals are allowed in so far as the award of interest for the pre-reference period is concerned. No costs.

JUDIS