2021 INSC 754

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6592 OF 2021

Union of India …Appellant

Versus

Manraj Enterprises …Respondent

J U D G M E N T

M.R. SHAH, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 12.04.2021 passed by the High Court of Delhi in FAO(OS) No.52/2018, whereby the Division Bench of the High Court has dismissed the said appeal of the appellant and has confirmed the order passed by the learned Single Judge upholding the award of interest by the sole arbitrator, the Union of India has preferred the present appeal.

2. That a contract was entered into between the appellant and the respondent with regard to three work contracts. A dispute arose between the parties and both the parties went into arbitration for the

resolution of the dispute. The learned sole arbitrator vide award dated 17.01.2011 awarded an amount of Rs.78,81,553.08. The learned arbitrator also awarded pendente lite and future interest at the rate of 12% and 18% respectively on the entire awarded amount except for the earnest money deposit and security deposit.

2.1 That the Union of India preferred an appeal under Section 34 of the Arbitration & Conciliation Act, 1996 (hereinafter referred to as the '1996 Act') challenging the award made on claim no.5 vide award dated 17.01.2011 pertaining to pre-suit, pendente lite and future interest awarded on the balance due payment, from the due date of payment.

2.2 The learned Single Judge of the High Court dismissed the said appeal. The matter was carried further before the Division Bench by way of FAO(OS) No. 52/2018 under Section 37 of the 1996 Act. By the impugned judgment and order, the Division Bench of the High Court has dismissed the said appeal and has confirmed the award made by the learned arbitrator awarding pendente lite interest and future interest awarded on the balance due payment. Hence, the present appeal.

3. Shri K.M. Nataraj, learned Additional Solicitor General appearing on behalf of the appellant – Union of India has vehemently submitted that as agreed between the parties and as per clause 16(2) of the General Conditions of Contract (for short, 'GCC') governing the contract

between the parties, there was a bar against payment of interest. It is submitted that as agreed between the parties and as per clause 16(2), no interest shall be payable upon the earnest money or the security deposit or the amounts payable to the contractor under the contract.

3.1 It is urged that even under Section 31(7)(a) of the 1996 Act, unless otherwise agreed between the parties, 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. It is submitted that if there is an expression "agreed between the parties" governing the contract that no interest shall be payable, parties are bound by such an agreement and no interest either pendente lite or future interest on the amount due and payable under the contract shall be awarded.

3.2 It is contended that in the present case, clause 16(2) of the GCC governing the contract between the parties specifically bars payment of interest, not only on the earnest money or security deposit, but also upon any amounts payable to the contractor under the contract. It is urged that since the parties are governed by the contract and the arbitrator and the arbitration proceedings are creatures of the contract, they cannot traverse beyond what has been contemplated in the contract between the parties.

3.3 It is further submitted that the power of the arbitrator to award pendente lite interest considering *pari materia* clause to clause 16(2) of the GCC has been examined by a three Judge Bench of this Court in the case of *Union of India v. Bright Power Projects (India) (P) Ltd., (2015) 9 SCC 695*. It has been specifically observed and held in the said case that in view of the specific contract between the parties and the bar for awarding the interest, the payment of interest was not permissible even on earnest money deposit or security deposit or **amounts payable to the contractor under the contract**. It is submitted that the expression "amounts payable to the contractor under the contract" is wide enough to cover every payment of amount payable under the contract.

3.4 It is submitted that the expression "money due under the contract" has been dealt with and considered by this Court in the case of *Garg Builders v. Bharat Heavy Electricals Limited,* 2021 SCC OnLine SC 855 = *2021 (11) SCALE 693.* It is observed and held that if the contract prohibits pre-reference and pendente lite interest, the arbitrator cannot award interest for the said period. It is contended that in the aforesaid case, the expression used was "any moneys due to the contractor" by the employer which includes the amount awarded by the arbitrator. Therefore, where the contract contains a specific clause which expressly

bars payment of interest, then it is not open for the arbitrator to grant pendente lite interest.

3.5 It is further submitted by Shri Nataraj, learned ASG that the expression “amounts payable to the contractor under the contract” cannot be read with “earnest money deposit” or “security deposit” by applying the principle of *ejusdem generis*. It is urged that the expressions have been employed in clause 16(2) of the GCC disjunctively by use of the word “or” and are intended to cover different situations which may arise. It is submitted that the earnest money deposit and security deposit are the amounts which are payable by the contractor whereas the amount awarded by the arbitrator or any other amounts payable under the contract could be under different circumstances and could be payable by either party. It is submitted therefore that the expression “amounts payable to the contractor under the contract” has been employed to cover such other situations or circumstances. It is therefore submitted that it is not possible to apply the principle of *ejusdem generis*. Heavy reliance is placed on the decision of this Court in the case of *Jaiprakash Associates Ltd. v. Tehri Hydro Development Corporation (India) Ltd., (2019) 17 SCC 786 (paragraphs 22 & 23)*. It is contended that in the aforesaid decision also, while discussing the power of the arbitrator to grant pendente lite

interest, it has been held that if the agreement between the parties specifically prohibits grant of interest, the arbitrator cannot award pendente lite interest in such cases.

3.6 Making the above submissions and relying upon the aforesaid decision, it is prayed to allow the present appeal and quash and set aside the judgments and orders passed by the High Court as well as the award passed by the learned arbitrator awarding the interest, pendente lite and future interest.

4. The present appeal is vehemently opposed by Shri Vikas Singh, learned Senior Advocate appearing on behalf of the respondent. It is submitted that if the entire clause 16 of GCC is read, it is evident that it pertains specifically to earnest money and security deposits and the same can in no way be read in a manner to imply a bar on pendente lite interest or other amounts as contended on behalf of the Union of India.

4.1 It is submitted that none of the judgments cited by the learned ASG has taken into account the fact that the law laid down by various judicial pronouncements under the Arbitration Act, 1940 has been codified statutorily under Section 31(7)(a) of the 1996 Act.

4.2 It is submitted that a five Judge Bench of this Court in the case of *Secretary, Irrigation Department, State of Orissa v. G.C. Roy, (1992) 1 SCC 508* had an occasion to consider the question of power of the

arbitrator to award interest pendente lite and it has been held that when the agreement between the parties does not prohibit grant of interest and where the party claims interest and the dispute has been referred to an arbitrator, then the arbitrator does have the power to award interest pendente lite.

4.3 It is submitted that even in the case of *Raveechee and Company v. Union of India, (2018) 7 SCC 664*, it has been held that the power to grant interest pendente lite is inherent in an arbitrator who also exercises the power to do equity and unless the agreement expressly bars the arbitrator from awarding interest pendente lite, the arbitrator has all the powers to grant pendente lite interest. It is urged that in the present case, clause 16 does not bar an arbitrator to award interest pendente lite. It is submitted that the arbitrator is never a party to the agreement and therefore it does not bar the arbitrator from awarding pendente lite interest. It is contended that the bar is on the parties from claiming interest on security deposits and earnest money and not on the arbitrator from awarding interest pendente lite on other amounts. In support of the same, reliance is placed on the decision of this Court in the case of *Kailash v. Nanhku, (2005) 4 SCC 480*, wherein this Court while dealing with Order VIII Rule 1 CPC, has held that the bar is on a party before the Court and not on the court's inherent powers. It is submitted that even

on a fair reading of Section 31(7)(a) of the 1996 Act, it is clear that the bar to claim interest is on the parties and not the arbitrator specifically.

4.4 It is contended that in the present case, the High Court has correctly placed reliance on Union of India v. M/s Pradeep Vinod Construction Co., Civil Appeal No. 2099 of 2007 decided on 03.08.2017 and has rightly distinguished the judgments relied upon by the appellant as the said judgments did not contain any discussion on clause 16(2) of the GCC. It is submitted that this Court in the case of *M/s Pradeep Vinod Construction Co. (supra)* has considered clause 16(2) of the GCC and after having considered the judgments relied upon by the appellant, namely, *Bright Power Projects (India) P. Ltd. (supra)* and other judgments relied upon, has held that no interest is awardable on earnest money and security deposit. It is submitted therefore that unless there is an express and specific bar against the arbitrator to award the pendente lite interest, the arbitrator is not precluded from awarding the interest on the amounts awarded.

4.5 It is urged that the decision of this Court in the case of *Tehri Hydro Development Corporation Ltd. (supra)*, relied upon on behalf of the appellant, is not applicable to the facts of the case on hand as the clauses in the said case were materially different from clause 16(2). It is submitted that clauses 50 & 51 contained an express bar on payment of

interest on money due to the contractor and payment of interest on money due to dispute.

4.6 It is further submitted that as such before the High Court, learned counsel appeared on behalf of the appellant conceded to the fact that the issue raised in the present appeal is covered by the judgment of this Court in the case of *M/s Pradeep Vinod Construction Co. (supra)* and therefore once it has been conceded, thereafter it is not open for the Union of India to raise the same issue after having made a clear concession.

4.7 It is submitted that in the present case, even the appellant too had claimed interest at the rate of 18% from the respondent by way of counter-claim and the same has been recorded in the Arbitral Tribunal's award dated 17.01.2011. It is submitted that the appellant cannot now be permitted to say that no interest pendente lite is liable to be awarded by the learned arbitrator.

4.8 Making the above submissions and relying upon the aforesaid decisions, it is prayed to dismiss the present appeal.

5. In rejoinder, it is submitted by Shri Nataraj, learned ASG that decision of this Court in the case of *M/s Pradeep Vinod Construction Co. (supra)* does not lay down any law/legal precedent. It is urged that in any case, the same has been rendered prior to the three Judges Bench

decision in the case of *Jaiprakash Associates Ltd. v. Tehri Hydro Development Corporation (India) Ltd. (supra)*.

6. We have heard learned counsel for the respective parties at length and pondered over the issues raised before us.

6.1 The short question which is posed for the consideration of this Court is in view of the specific clause 16(2) of the GCC, whether the contractor is entitled to any interest pendente lite on the amounts payable to the contractor other than upon the earnest money or the security deposit.

6.2 Clause 16 of the GCC reads as under:

> "16: Earnest Money and Security Deposit- (1) The earnest money deposited by the Contractor with his tender will be retained by the Railway as part of security for the due and faithful fulfilment of the contract by the contractor. The balance to make up this security deposit which will be 10 per cent of the total value of the contract, unless otherwise specified in the special conditions, if any, may be deposited by the Contractor in case or in the form
> of Government Securities or may be recovered by percentage deduction from the Contractor's "on account" bills provided also that in case of a defaulting contractor the Railway may retain any amount due for payment to the contractor on spending 'on account bills', so that the amount or amounts so retained may not exceed 10% of the total value of the contract.
>
> (2) 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 deposited in terms of Sub-clause (1) of this Clause will be repayable with interest accrued thereon."

Thus, as such, as per clause 16(2) no interest would be payable upon the earnest money or the security deposit or **amounts payable to the contractor under the contract**.

6.3 The scope of the expression "money due under the contract" has been considered by this Court in the case of *State of Karnataka v. Shree Rameshwara Rice Mills, (1987) 2 SCC 160*. In paragraph 9, it is observed and held as under:

> "9. ……..What the Full Bench has failed to notice is that even though the damages become payable on account of breach of conditions of the contract, the liability to pay damages does not fall outside the terms of the contract but within the terms of the contract. The words "any amount that may become due or payable by the first party to the second party under any part of this agreement" have to be read in conjunction with the earlier portion of the clause stipulating liability on the party contracting with the State to pay damages for breach of conditions. Therefore, it follows that though damages become payable on account of breach of conditions of the agreement they nevertheless constitute amounts payable under the contract i.e. under one of the terms of the contract imposing liability to pay damages for breach of conditions. To illustrate the position if the agreement provides for a liquidated sum being paid as damages for breach of conditions instead of a sum to be assessed by the Deputy Commissioner, it cannot be said that the specified damages will not be money due under the contract and hence the damages cannot be recovered under the Revenue Recovery Act. What applies to specified damages will likewise apply to damages which are quantified after assessment….."

Therefore, it is held that though damages become payable on account of breach of conditions of the agreement they nevertheless constitute amounts payable under the contract.

7. An identical question came up for consideration before this Court in the recent decision of this Court in the case of *Garg Builders (supra)*. In the said case, this Court considered clause 17, which reads as under:

> "Clause 17 : No interest shall be payable by BHEL on Earnest Money Deposit, Security Deposit **or on any moneys due to the contractor."**
>
> [Bold letters are ours]

After considering various decisions on award of interest pendente lite and the future interest by the arbitrator and after discussing the decisions of this Court in the cases of *Ambica Construction v. Union of India, (2017) 14 SCC 323 and Raveechee and Company (supra)* and other decisions on the point, this Court has observed in paragraphs 9 to 18 as under:

> **"9.** On the other hand, Mr. Pallav Kumar, learned counsel for the respondent, submitted that Section 31(7)(a) of the 1996 Act gives paramount importance to the contract entered into between the parties and categorically restricts the power of an arbitrator to award pre-reference and *pendente lite* interest when the parties themselves have agreed to the contrary. He argued that if the contract itself contains a specific clause which expressly bars the payment of interest, then it is not open for the arbitrator to grant *pendente lite* interest. It was further argued that *Ambica Construction* (supra) is not applicable to the instant case because it was decided under the Arbitration Act, 1940 whereas the instant case falls under the 1996 Act. It was further argued that Section 3 of the Interest Act confers power on the Court to allow interest in the proceedings for recovery of any debt or damages or in proceedings in which a claim for interest in respect of any debt or damages already paid. However, Section 3(3) of the Interest Act carves out an exception and recognizes the right of the parties to contract out of the payment of interest arising out of any debt or damages and sanctifies contracts which bars the payment of interest arising out of debt or damages. Therefore, Clause 17

of the Contract is not violative of any the provisions of the Indian Contract Act, 1872. In light of the arguments advanced, the learned counsel prays for dismissal of the appeal.

10. We have carefully considered the submissions of the learned counsel for both the parties made at the Bar. The law relating to award of *pendente lite* interest by Arbitrator under the 1996 Act is no longer *res integra*. The provisions of the 1996 Act give paramount importance to the contract entered into between the parties and categorically restricts the power of an arbitrator to award pre-reference and *pendente lite* interest when the parties themselves have agreed to the contrary. Section 31(7)(a) of the 1996 Act which deals with the payment of interest is as under:

"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."

11. It is clear from the above provision that if the contract prohibits pre-reference and *pendente lite* interest, the arbitrator cannot award interest for the said period. In the present case, clause barring interest is very clear and categorical. It uses the expression "any moneys due to the contractor" by the employer which includes the amount awarded by the arbitrator.

12. In *Sayeed Ahmed and Company* v. *State of Uttar Pradesh, (2009) 12 SCC 26,* this Court has held that a provision has been made under Section 31(7)(a) of the 1996 Act in relation to the power of the arbitrator to award interest. As per this section, if the contract bars payment of interest, the arbitrator cannot award interest from the date of cause of action till the date of award.

13. In *Sree Kamatchi Amman Constructions* v. *Divisional Railway Manager (Works), Palghat, (2010) 8 SCC 767,* it was held by this Court that where the parties had agreed that the interest shall not be payable, the Arbitral Tribunal cannot award interest between the date on which the cause of action arose to the date of the award.

14. *Bharat Heavy Electricals Limited* v. *Globe Hi-Fabs Limited, (2015) 5 SCC 718,* is an identical case where this Court has held as under:

“16. In the present case we noticed that the clause barring interest is very widely worded. It uses the words “any amount due to the contractor by the employer”. In our opinion, these words cannot be read as ejusdem generis along with the earlier words “earnest money” or “security deposit”.”

15. In *Sri Chittaranjan Maity* v. *Union of India, (2017) 9 SCC 611,* it was categorically held that if a contract prohibits award of interest for pre-award period, the arbitrator cannot award interest for the said period.

16. Therefore, if the contract contains a specific clause which expressly bars payment of interest, then it is not open for the arbitrator to grant *pendente lite* interest. The judgment on which reliance was placed by the learned counsel for the appellant in *Ambica Construction* (supra) has no application to the instant case because *Ambica Construction* was decided under the Arbitration Act 1940 whereas the instant case falls under the 1996 Act. This has been clarified in *Sri Chittaranjan Maity* (supra) as under:

“**16.** Relying on a decision of this Court in *Ambica Construction* v. *Union of India*, (2017) 14 SCC 323, the learned Senior Counsel for the appellant submits that mere bar to award interest on the amounts payable under the contract would not be sufficient to deny payment on pendente lite interest. Therefore, the arbitrator was justified in awarding the pendente lite interest. However, it is not clear from *Ambica Construction* (supra) as to whether it was decided under the Arbitration Act, 1940 (for short “the 1940 Act”) or under the 1996 Act. It has relied on a judgment of Constitution Bench in *State of Orissa* v. *G.C. Roy*, (1992) 1 SCC 508. This judgment was with reference to the 1940 Act. In the 1940 Act, there was no provision which prohibited the arbitrator from awarding interest for the pre-reference, pendente lite or post-award period, whereas the 1996 Act contains a specific provision which says that if the agreement prohibits award of interest for the pre-award period, the arbitrator cannot award interest for the said period. Therefore, the decision in *Ambica Construction* (supra) cannot be made applicable to the instant case.”

17. The decision in *Raveechee and Company* (supra) relied on by the learned counsel for the appellant is again under the Arbitration Act 1940 which has no application to the facts of the present case.

18. Having regard to the above, we are of the view that the High Court was justified in rejecting the claim of the appellant seeking *pendente lite* interest on the award amount.”

In the case of *Garg Builders(supra)*, this Court observed and held that the decisions of this Court in the cases of *Ambica Construction (supra) and Raveechee and Company (supra)*, relied upon by the learned senior counsel appearing on behalf of the respondent herein, shall have no application as the same were under the Arbitration Act, 1940. It is not in dispute that in the present case, the parties are governed by the 1996 Act.

8. In the case of *Bright Power Projects (India) (P) Ltd. (supra)*, while considering *pari materia* clause with clause 16(2) of the GCC, a three Judge Bench of this Court has held that when the parties to the contract agree to the fact that interest would not be awarded on the amount payable to the contractor under the contract, they are bound by their understanding and having once agreed that the contractor would not claim any interest on the amount to be paid under the contract, he could not have claimed interest either before a civil court or before an Arbitral Tribunal. In the aforesaid case, this Court considered clause 13(3) of the contract, which reads as under:

> "13.3 – 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."

8.1. In the said decision, this Court also considered Section 31(7)(a) of the 1996 Act. It is specifically observed and held that Section 31(7) of

the 1996 Act, by using the words “unless otherwise agreed by the parties” categorically specifies that the arbitrator is bound by the terms of the contract insofar as award of interest from the date of cause of action to date of the award is concerned. It is further observed and held that where the parties had agreed that no interest shall be payable, the Arbitral Tribunal cannot award interest. Thus, the aforesaid decision of a three Judge Bench of this Court is the answer to the submission made on behalf of the respondent that despite the bar under clause 16(2) which is applicable to the parties, the Arbitral Tribunal is not bound by the same. Therefore, the contention raised on behalf of the respondent that *de hors* the bar under clause 16(2), the Arbitral Tribunal independently and on equitable ground and/or to do justice can award interest pendente lite or future interest has no substance and cannot be accepted. Once the contractor agrees that he shall not be entitled to interest on the amounts payable under the contract, including the interest upon the earnest money and the security deposit as mentioned in clause 16(2) of the agreement/contract between the parties herein, the arbitrator in the arbitration proceedings being the creature of the contract has no power to award interest, contrary to the terms of the agreement/contract between the parties and contrary to clause 16(2) of the agreement/contract in question in this case.

10. The further submission made on behalf of the respondent is that clause 16 has to be read as a whole and on doing so, it can be said that clause 16 pertains specifically to earnest money and security deposit and that the same can in no way be read in a manner to imply a bar on pendente lite interest. It is required to be noted that clause 16(1) is with respect to earnest money/security deposit. However, clause 16(2) is specifically with respect to interest payable upon the earnest money or the security deposit **or amounts payable to the contractor under the contract**. The words used in clause 16(2) is "or". Therefore, the expression "**amounts payable to the contractor under the contract"** cannot be read in conjunction with "earnest money deposit" or "security deposit" by applying the principle of *ejusdem generis*. The expression "**amounts payable to the contractor under the contract"** has to be read independently and disjunctively to earnest money deposit and security deposit as the word used is "or" and not "and" between "earnest money deposit", "security deposit" and "amounts payable to the contractor under the contract". Therefore, the principle of *ejusdem generis* is not applicable in the present case. On the principle of *ejusdem generis*, this Court in the case of *Tehri Hydro Development Corporation (India) Ltd. (supra), in paragraphs 22 and 23*, has observed and held as under:

“22. Insofar as argument based on the principle of *ejusdem generis* is concerned, the Division Bench has held that that is not applicable in the present case. We find that it is rightly so held. *Ejusdem generis* is the rule of construction. The High Court has negated this argument in the following manner: [Jaiprakash Associates Ld. V. Tehri Hydro Development Corpn. (India) Ltd., 2012 SCC OnLine Del 6213]

“*18*. The rule of *ejusdem generis* guides us that where two or more words or phrases which are susceptible of analogous meaning are coupled together, a noscitur a sociis, they are to be understood to mean in their cognate sense and take colour from each other but only if there is a distinct genus or a category. Where this is lacking i.e., unless there is a category, the rule cannot apply.”

As rightly held, the rule of *ejusdem generis* would be applied only if there is distinct genus or a category, which is lacking in the instant case. This rule is applicable when particular words pertaining to a clause, category or genus are followed by general words. In such a situation, the general words are construed as limited to things of same kind as those specified. In that sense, this rule reflects an attempt “to reconcile incompatibility between the specific and general words in view of the other rules of interpretation that all words in a statute are given effect, if possible, that a statute is to be construed as a whole and that no words in a statute were presumed to be superfluous”. [See *Lokmat Newspapers (P) Ltd.* v. *Shankarprasad* [*Lokmat Newspapers (P) Ltd.* v. *Shankarprasad*, (1999) 6 SCC 275].

23. In fact, construing the similar clause, this Court in *BHEL* v. *Globe Hi-Fabs Ltd.,* (2015) 5 SCC 718 has held that rule of *ejusdem generis*, is No. applicable inasmuch as : (*BHEL case* [*BHEL* v. *Globe Hi-Fabs Ltd.*, (2015) 5 SCC 718 : (2015) 3 SCC (Civ) 287] , SCC pp. 722-23, paras 12 & 15-16)

“*12*. The rule of *ejusdem generis* has to be applied with care and caution. It is not an inviolable rule of law, but it is only permissible inference in the absence of an indication to the contrary, and where context and the object and mischief of the enactment do not require restricted meaning to be attached to words of general import, it becomes the duty of the courts to give those words their plain and ordinary meaning. As stated [*Quazi* v. *Quazi*, 1980 AC 744 : (1979) 3 WLR 833 HL] by Lord Scarman:

‘If the legislative purpose of a statute is such that a statutory series should be read *ejusdem generis*, so be it, the rule is helpful. But, if it is not, the rule is more likely to defeat than to fulfil the purpose of the statute. The rule like many other rules of statutory interpretation, is a useful servant but a bad master.’

So a narrow construction on the basis of *ejusdem generis* rule may have to give way to a broader construction to give effect to the intention of Parliament by adopting a purposive construction.

15. A word of caution is here necessary. The fact that the *ejusdem generis* rule is not applicable does not necessarily mean that the prima facie wide meaning of the word “other” or similar general words cannot be

> restricted if the language or the context and the policy of the Act demand a restricted construction. In the expression "defect of jurisdiction or other cause of a like nature" as they occur in Section 14(1) of the Limitation Act the generality of the words "other cause" is cut down expressly by the words "of a like nature", though the rule of *ejusdem generis* is strictly not applicable as mention of a single species "defect of jurisdiction" does not constitute a genus. Another example that may here be mentioned is Section 129 of the Motor Vehicles Act which empowers any "police officer authorised in this behalf or other person authorised in this behalf by the State Government" to detain and seize vehicles used without certification of registration or permit. The words "other person" in this section cannot be construed by the rule of *ejusdem generis* for mention of single species, namely, "police officer" does not constitute a genus but having regard to the importance of the power to detain and seize vehicles it is proper to infer that the words "other person" were restricted to the category of government officers. In the same category falls the case interpreting the words "before filing a written statement or taking any other steps in the proceedings" as they occur in Section 34 of the Arbitration Act, 1940. In the context in which the expression "any other steps" finds place it has been rightly construed to mean a step clearly and unambiguously manifesting an intention to waive the benefit of arbitration agreement, although the rule of *ejusdem generis*, has No. application for mention of a single species viz. written statement does not constitute a genus.
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> *16*. In the present case we noticed that the clause barring interest is very widely worded. It uses the words "any amount due to the contractor by the employer". In our opinion, these words cannot be read as *ejusdem generis* along with the earlier words "earnest money" or "security deposit"."

11. Further, heavy reliance is placed on the decision of this Court in the case of *M/s Pradeep Vinod Construction Co. (supra)* by the learned counsel appearing on behalf of the respondent. The same shall not be applicable for the reason that the said decision is by a two Judge Bench and the contrary view taken by this Court in the case of *Bright Power Projects (India) (P) Ltd. (supra)* is by a three Judge Bench. Also, in the case of *M/s Pradeep Vinod Construction Co. (supra),* this Court has not considered the binding decision of this Court in the case of *Bright Power Projects (India) (P) Ltd.*

(supra), which is by a Bench of three Judges. Even otherwise, the same is prior to the decision of this Court in the case of *Tehri Hydro Development Corporation (India) Ltd. (supra)*, and the said subsequent decision of this Court is also a three Judge Bench decision. Moreover, in the case of *M/s Pradeep Vinod Construction Co. (supra)*, though in clause 16(2), the expression used is "or amounts payable to the contractor under the contract", this Court has only considered the non-award of interest on earnest money and security deposit. In any case, in view of the subsequent decisions of this Court, referred to hereinabove and in view of clause 16(2) of the GCC, the arbitrator could not have awarded the interest, pendente lite or future interest on the amount due and payable to the contractor under the contract in the instant case.

12. The last submission made on behalf of the respondent is that as the learned counsel appearing on behalf of the appellant herein, before the High Court, conceded that the issue raised in the petition is covered by the judgment of this Court in *M/s Pradeep Vinod Construction Co. (supra)* and that even the appellant has claimed interest @ 18% against the respondent-contractor, therefore it is not open for the appellant to re-agitate the issue before this Court is concerned, it is required to be noted that the concession if any by the counsel which is contrary to the law laid down by this Court shall

not be binding on the parties. Further, merely because the appellant has claimed interest, does not imply that the contractor shall be entitled to interest pendente lite. Even if the appellant would have been awarded interest, the same also was not permissible and could have been a subject matter of challenge. In short, there cannot be an *estoppel* against law.

13. In view of the aforesaid discussion and for the reasons stated above, we hold that the learned Arbitrator in the instant case has erred in awarding pendente lite and future interest on the amount due and payable to the contractor under the contract in question and the same has been erroneously confirmed by the High Court.

14. Accordingly, the present appeal succeeds. The impugned judgment and order passed by the Division Bench of the High Court in an appeal under Section 37 of the 1996 Act and the order passed by the learned Single Judge in an application under Section 34 of the 1996 Act and the award passed by the learned Arbitral Tribunal awarding pendente lite and future interest on the amounts held to be due and payable to the contractor under the contract are hereby quashed and set aside. It is held that in view of specific bar contained in clause 16(2) of the GCC, the contractor shall not be entitled to any interest pendente lite or future interest on the amounts due and payable to it under the contract.

15. The appeal is allowed accordingly. However, in the facts and circumstances of the case, there shall be no order as to costs.

…………………………….J.
[M.R. SHAH]

NEW DELHI; …………………………….J.
NOVEMBER 18, 2021. [B.V. NAGARATHNA]