

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA

&

HON'BLE SHRI JUSTICE PRADEEP MITTAL

MISC. PETITION No. 3672 of 2025

M/S SHYAM INDUS POWER SOLUTION PRIVATE LTD.

Versus

MADHYA PRADESH MADHYA KSHETRA VIDYUT VITRAN CO. LTD.

Appearance:

Shri Somesh Shukla – Advocate appearing on behalf of Shri Pankaj Kumar Singh - Advocate (through video conferencing mode) for the petitioner.

Shri Bharat Singh with Shri Harpreet Singh Gupta and Shri Manan Agrawal - Advocates appearing on behalf of the respondent.

WITH

MISC. PETITION No. 1446 of 2025

***MADHYA PRADESH MADHYA KSHETRA VIDYUT VITARAN COM.
LTD.***

Versus

M/S SHYAM INDUS POWER SOLUTIONS PVT. LTD

Appearance:

Shri Bharat Singh – Additional Advocate General with Shri Harpreet Singh Gupta and Shri Manan Agrawal - Advocates appearing on behalf of the petitioner.

Shri Somesh Shukla - Advocate appearing on behalf of Shri Pankaj Kumar Singh - Advocate (through video conferencing mode) for the respondent.

RESERVED ON : 17.12.2025

PRONOUNCED ON : 05.01.2026

ORDER

Per: Justice Vivek Rusia

M/s Shyam Indus Power Solutions Pvt. Ltd/Decree Holder has filed M.P. No.3672/2025 under Article 227 of the Constitution of India, challenging the order dated 27.03.2024 passed by the VIII Additional District and Sessions Judge, Commercial Court, Bhopal in case No.EX AB 275/2021.

2. The Madhya Pradesh Madhya Kshetra Vidyut Vitaran Co. Ltd. (MPMKVVCL)/Judgment Debtor has also filed M.P. No.1446/2025 under Article 227 of the Constitution of India, being aggrieved by the order dated 27.03.2024 passed by the learned 10th Additional District Judge, Bhopal (M.P.) in EX No.37404/2024.

Facts of the case, in short, are as follows:-

3. The Madhya Pradesh Madhya Kshetra Vidyut Vitaran Co. Ltd. (MPMKVVCL/Judgment Debtor) is a wholly State Government Company registered under the provisions of the Indian Companies Act, 1956, engaged in the activities of distribution and retail supply of electricity and power within the areas covered by the Commissioner, Bhopal, Hoshangabad, Gwalior, and Chambal. The electricity Company invited tender on 27.07.2007 for the distribution of electricity for Chhola Zone of the City Division (North), Bhopal vide Specification No.ACE/CC/05/2007/DP/3437. M/s. Shyam Indus Power Solutions Pvt. Ltd. (hereinafter referred to as Decree Holder) submitted a tender for the above work, and the same was accepted by the MPMKVVCL/Judgment Debtor. An agreement was executed between the MPMKVVCL/Judgment Debtor and Decree Holder on 22.12.2007 for a period of five years from 01.02.2008 to 31.05.2012. During the currency of the contract period, a difference/dispute arose between the parties over the application of the Input Tax Formula.

4. The MPMKVVCL/Judgment Debtor calculated and recovered Input Tax Formula on the basis of terms and conditions of the agreement, whereas M/s. Shyam Indus claimed Input Rate on the basis of the tender documents. In view of the arbitration Clause 21.1.6 in the NIT, arbitration proceedings were commenced before Shri S.K. Dubey, retired Judge of this Court, as Presiding Arbitrator and two other Arbitrators (hereinafter referred to as the Arbitral Tribunal). Decree

Holder filed a statement of claims on 04.09.2010, and MPMKVCL/Judgment Debtor denied the claims by filling written statement.

5. The learned Arbitrator Tribunal passed an award in favour of M/s. Shyam Indus/Decree Holder. The operative part of the arbitral award dated 04.02.2012 is reproduced below:-

32. As an upshot, the Claimant is entitled to the amount of Rs. 1,56,80,554/ calculated from the inception till 31.07.2010 and interest/losses thereon of Rs. 21,37,315/- and thereafter the difference in realizing the excess amount of the Input Rate on the date of the completion of the period of the Distribution Agreement.

33. The Claimant would also be entitled in the amount of CAPEX the scheme/s as submitted by the Claimant in accordance with the original terms relating to CAPEX as contained in the Tender Document and as such, on expiry of period of contract whatever benefits of the Capital Expenditure would be available on calculation in the manner provided in the Tender Document the claimant would be entitled for the same.

34. As regards interest on the amount so charged in excess, in the circumstances of this case, the Claimant would be entitled to interest 9¹²% per annum on the amount of Rs.1,56,80,554/- from 01.08.2010 till its payment.

6. By the aforesaid award, the learned Arbitrator Tribunal awarded (a) Rs.1,56,80,554/- as an excess amount of Input Rate from date of inception till 31.07.2010, (b) interest/losses thereon of Rs.21,37,315/- (c) difference of the said amount of Input Rate from 01.08.2010 till completion of the period of the Distribution Agreement,(d) CAPEX (Capital Expenditure) in accordance with the original terms relating to

CAPEX in the Tender Document on expiry of contract period, (e) the interest @ of 9.5% per annum on the amount of Rs.1,56,80,554/- from 01.08.2010 till its payment and (f) cost of Rs.3,00,000/-.

7. The MPMKVCL/Judgment Debtor challenged the aforesaid award under Section 34 of the Arbitration and Conciliation Act, 1996, but remained unsuccessful. Now, Decree Holder M/s. Shyam Indus has filed an execution case before the Commercial Court, Bhopal, claiming the following amount as reproduced in para-3 of the impugned order:-

03.जबकि निर्णित ऋणी की ओर से अपने लिखित कथन में लेख किया गया है कि उसके द्वारा डिक्रीदार को अवार्ड राशि काभुगतान किया जा चुका है और निम्नानुसार विवरण पेश किया गया है।

01 भुगतान योग्य राशि (आर्बीट्रिशन आदेश दि.04/02/22 के अनुसार)

(अ) आर्बीट्रिशन आदेश दिनांक 04/02/12 के बिंदु क्रमांक 32 के अनुसार इनपुटरेट का अंतर फरवरी -08 से जुलाई 2010 तक राशि	1,56,80,554/-
(ब) ब्याज राशि/क्षति राशि (बिंदु क्रमांक 32 के अनुसार)	21,37,315/-
(ब) क्षति पूर्ति (अवार्ड लागत)(बिंदु क्रमांक 35 के अनुसार)	3,00,000/-
देयक कुल	1,81,17,869/-

02- ब्याज की गणना आर्बीट्रेशन आदेश दिनांक 04/02/12 (बिंदु क्रमांक 35 के अनुसार)

(अ) 9.5% वार्षिक दर से 4.5 वर्ष हेतु दिनांक 01/08/10 से 31/01/15 तक मूल राशि 1,56,80,554/- रूपये

$$\frac{1,56,80,554 \times 4.5 \times 9.5\%}{100}$$

67,03,437/-

100

(ब) चूंकि आर्बीट्रेशन आदेश दिनांक 04/02/12 के बिंदु क्रमांक 32 में दी गई मूल राशि रूपये 1,56,80,554/- रूपये का 50% भुगतान चेक क्रमांक 590470 दिनांक 20/01/15 को किया जा चुका है। अतः शेष राशि रूपये 78,40,277/- रूपये का ब्याज गणना योग्य है जो निम्नानुसार है:- 01/02/15 से 28/02/19 तक

$$\frac{78,40,277 \times 4.5 \times 9.5\%}{100}$$

29,79,305/-

100

(स) कुल ब्याज की राशि

96,82,742/-

03- कुल भुगतान योग्य राशि (1+2)

2,78,00,611/-

04- कुल भुगतान की गई राशि

(अ) दिनांक 21/10/15 इनपुटरेट अंतर राशि का 50% धनादेश क्रमांक 590470 दिनांक 20/01/15	78,40,277/-
(ब) दिनांक 18/04/2015	

ब्याज की राशि	21,37,315/-
क्षति पूर्ति की राशि	3,00,000/-
कुल 2437315/-रूपये का 50%	12,18,658/-
दिनांक 18/04/15 का धनादेश क्रमांक 090147	
(स) दिनांक 06/02/19 धनादेश क्रमांक 939005	1,66,05,297/-
(द) कुल भुगतान की गई राशि रूपये	2,56,64,232/-

05-

(3-4)

शेष राशि

21,36,379/-

(6) अवार्ड के पश्चात इनपुट अंतर राशि अवधि 2,92,67,252/-

01/08/10 से 31/05/12

पूर्व से गठित समिति द्वारा की गई गणना अनुसार :-

(5+6) शेष भुगतान योग्य राशि

3,14,03,631/-

capex- केपेक्स के दावे हेतु किसी भी प्रकार के दस्तावेज प्रस्तुत नहीं किये गये हैं जबकि आर्बीट्रेशन आदेश दिनांक 04/02/12 के बिंदु क्रमांक 33 के अनुसार टेंडर डाक्यूमेंट के अनुसार भुगतान किया जाना है। अतः मे0 श्याम इण्डल के द्वारा न्यायालय के समक्ष प्रस्तुत गणना पत्रक में संलग्न केपेक्स दावे की शीट पर किसी भी प्रकार से टेण्डर डाक्यूमेंट के अनुसार पत्रक प्रस्तुत नहीं किये गये हैं।

8. According to the decree holder, M/s. Shyam Indus/Decree Holder, the difference of Input Rate comes to Rs.4,65,44,400/- and as per

MPMKVVCL/Judgment Debtor, the said Input Rate comes to Rs.2,92,67,252/-. So far as the CAPEX amount Rs.1,92,46,328/- is concerned, there is no dispute between the parties as held by the learned Commercial Court. Even in these petitions, the MPMKVVCL/Judgment Debtor is not challenging the said amount.

9. That vide impugned order learned Commercial Court has not given any finding as to which amount is liable to be accepted as dereference of Input Rate, i.e., Rs.4,65,44,400/- or Rs.2,92,67,252/-. Before the Executing Court, the Decree Holder filed an application under Section 31(7)(b) of the Arbitration and Conciliation Act, 1996, claiming interest @ of 18% per annum on the amount under recovery, i.e., the difference between the Input Rate and CAPEX amount. The said application was objected to by MPMKVVCL/Judgment Debtor by submitting that the learned Arbitral Tribunal has only awarded interest @ of 9.5% per annum on the amount of Rs.1,56,80,554/-, which has been paid to the Decree Holder. As no interest has been awarded on the CAPEX amount for which the award was liable to be challenged under section 34 of the A&C Act of 1996.

10. The learned Commercial Court has rejected the application by holding that the Decree Holder ought to have challenged the award to claim the interest under Section 31(7)(b) of the Arbitration and Conciliation Act, 1996. Being aggrieved by the aforesaid part of the impugned order, M/s. Shyam Indus filed M.P. No.3672/2025. The

Judgment Debtor/Electricity Company has filed M.P. No.1446/2025, being aggrieved by the part of the impugned order by which the difference of Input Rate Rs.2,39,25,477/- has not been accepted.

Submissions

11. Learned counsel for the Decree Holder/M/s. Shyam Indus submitted that in view of the provision of Section 31(7)(b) of the A&C Act, 1996, the decree holder is entitled to interest at the rate of 18% from the date of award till the date of payment even if the award is silent in that regard. It is further submitted that no interest has been awarded on the CAPEX amount. By virtue of Section 31(7)(b) of the A&C Act, 1996, it is mandatory on the part of the Executing Court to add the amount payable to the decree holder under the head of interest @ 18%. In support of the above contentions, learned counsel for the petitioner has placed reliance on the judgment passed by the Apex Court in the case of *R.P. Garg Vs. Chief General Manager, Telecom Department and Others* [(2024) SCC Online SC 2928].

12. Learned counsel appearing for the decree holder has also placed reliance on the judgment passed by the Apex Court in the case of the *State of Haryana and Others Vs. S.L. Arora and Company* [(2010) 3 SCC 690], in which the Apex Court held that the statutory post award interest may be claimed in an execution proceeding. Learned counsel for the petitioner has also placed reliance on a judgment passed by the High

Court of Delhi in the case of *Union of India and Another Vs. M/s. P.C. Sharma and Company* [(2006) SCC Online Del 1619] and a judgment passed by the High Court of Guahati in the case of *Buildworth (P) Limited Vs. Bharat Heavy Electrical Limited* [(2021 SCC Online Gau 2713)]. Shri Somesh Shukla, learned counsel for the petitioner, further submitted that the Executing Court vide impugned order dated 27.03.2024 has wrongly held that post award interest @ of 18% can be claimed under Section 34 of A&C Act, 1996 proceedings and not under Section 36 of A&C Act, 1996 execution proceedings. Hence, the impugned order rejecting the application filed under Section 31(7)(b) at this preliminary stage without entering into the merit is liable to be rejected.

13. *Per contra*, Shri Bharat Singh, learned counsel appearing for the electricity Company, argued that the learned executing court has rightly denied the interest under Section 31(7)(b) of A&C Act, 1996, as the learned Arbitral Tribunal has only awarded the interest @ of 9.5% per annum on the Input Rate Difference. So far as the CAPEX amount is concerned, no interest has been awarded in the Tender Document as well as in the impugned award. Therefore, no interference is called for. The Executing Court has rightly passed an impugned order.

14. So far as the calculation of Input Rate is concerned, Shri Bharat Singh, learned counsel submitted that the learned Executing Court has not considered the Clause 35.4.1 of the Tender Document, which clearly

mentions that in case of any change in the tariff structure by the MPERC during the distribution period, each of the Input Rate will be revised as per the formula provided therein. The tariff order of the retail for retail consumers passed by MPERC for different years consists of various parameters like energy charges, fixed charges, and other charges, and all the charges together derives unit rate of electricity for consumers of a different category. The decree holder has wrongly taken the base year as per Clause 35.4.1 of the Tender Document, which refers to the first year of the distribution period, and the same is not variable. The base year cannot be varied for every revision. The D_1 is a fixed value and cannot be varied every year.

15. As per Clause 35.4.1, the D_1 is a base year tariff for the domestic category. Since the distribution began in February 2008, which is a part of the financial year 2007-2008, the last year would be 2006-2007, and the maximum set of consumers was in the bracket of 0-30 units. Accordingly, the D_1 would be a fixed value, and the base year would not change with every revision. Therefore, the electricity Company has rightly calculated the difference in Input Rate Rs.65,71,53,258/-. Thus, only Rs.2,92,67,252/- is liable to be paid with interest @ of 9.5%.

16. Per contra, learned counsel appearing for the decree holder in W.P. No.1446/2025 submitted that the learned Arbitral Tribunal has accepted and awarded the claim of Rs.1,56,80,554/- payable from the date of inception till 31.07.2010, calculated by the claimant decree holder.

Therefore, under the same formula, the further amount is liable to be calculated, i.e., till the completion of the period of the distribution agreement. The said award has attained finality; thus, there cannot be a dispute in respect of the calculation of the difference of the input rate in execution proceedings.

Appreciations and Conclusion

17. The learned Arbitral Tribunal vide award dated 04.02.2012 had upheld the terms and conditions of the Tender Document for the calculation of the Input Rate as well as CAPEX. The terms and conditions incorporated in the distribution agreement executed between the parties have been discarded. The learned Tribunal has also held that in spite of the revision of tariff rate in 2009 by MPERC, the tariff has to be calculated in accordance with the formula given in the Tender Document and not in accordance with the formula as contained in the distribution agreement.

18. The formula for calculation of Input Rate is given in Tender Document as Clause 35.4, which is reproduced below:-

35.4. Input Rate

35.4.1. In case of any change in the tariff structure by the MPERC during the Distribution Period, each of the Input Rate will be revised as follows. The revised Input Rates would be applicable from the date when tariff changes become applicable to consumers.

$$\text{BAT} = \text{BA}_D + \text{BA}_A + \text{BA}_{ND} + \text{BA}$$

$$RX\{(D_{2X}BA_D) + (A_{2X}BA_A) + (ND_{2X}BA_{ND}) + (I_{2X}BA_I)\}$$

$$D_1 \text{ BAT} \quad A_1 \text{ BAT} \quad ND_1 \text{ BAT} \quad I_1 \text{ BAT}$$

Here,

R = Accepted Input Rate at the beginning of the Distribution Period

D₁ = Base year tariff for domestic category (for the sub-category with the maximum number of consumers in the last one year)

D₂ = Revised tariff for domestic category (for the same category as considered for D₁)

A₁ = Base year tariff for agriculture category (for the sub-category with the maximum number of consumers in the last year)

A₂ = Revised tariff for the agriculture category (for the same category as considered for A₁)

ND₁ = Base Year Tariff for Non-Domestic Category (for the sub-category with the maximum number of consumers in the last year)

ND₂ = Revised Tariff for Non-domestic category (for the same category as considered for ND₁)

I₁ = Base year tariff for industrial category (for the sub-category with the maximum number of consumers in the last year)

I₂ = Revised Tariff for Industrial category (for the same category as considered for I₁)

BA_D = Total billed amount for the last one year for the domestic category (for all the subcategories under domestic)

BA_A = Total billed amount for the last one year for the agriculture category (for all the subcategories under agriculture)

BA_{ND} = Total billed amount for the last one year for the non-domestic category (for all the sub-categories under non-domestic)

BA_I = Total billed amount for the last one year for the industrial category (for all the subcategories under industrial)

Where base year refers to the first year of the Distribution Period

35.4.2. Please note that the tariff for all consumer categories used in the formula is net of subsidy.

35.4.3. The above formula proportionately adjusts the pre-agreed Input Rate for the change in tariff for domestic, non-domestic, industrial and agriculture categories. As other categories form an insignificant percentage of the total consumption, they have not been considered in the adjustment above.

19. Clause 35.4.1 clearly provides that in case of any change in tariff structure by the MPERC during the distribution period, each of the Input Rate will be revised as follows:-

S.No.	Particulars	As per Shyam Indus			As per the Circle level Committee		
		1st revision	2nd revision	3rd revision	1st revision	2nd revision	3rd revision
1	D-1	3.5	1.75	3.05	1.75	1.75	1.75
2	D-2	3.5	1.75	3.6	1.75	1.75	1.95
3	ND-1	5.45	5.45	5.45	5.45	5.45	5.45
4	ND-2	5.37	4.65	5.00	5.37	5.52	5.92
5	I-1	3.2	3.2	3.2	4.41	4.41	4.41
6	I-2	3.2	3.25	3.5	4.4	4.61	4.73
7	Bad	51641385	60814212	69424071	40553618.8	50217738.7	57346809.56
8	BAnd	25127851	40247175	45489757	21282849.27	34459006.28	36078642.13
9	BAI	10280305	9599905	12121001	13043240.76	7936656	10424598.08

10	BAT	87049541	110661294	127034829	74879708.83	92613400.98	103850032
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20. Therefore, Input Rate was subjected to revision after the tariff schedule was published by the MPERC. As per the formula, the ‘**R**’ denotes the accepted Input Rate at the beginning of the distribution period. Thus, on the basis of this Input Rate, the tender of the petitioner was accepted because the bidder was required to submit a price bid on the basis of ‘Input Rate’ under Clause 9.1, and the price bid would be accepted on the basis of ‘Input Rate’. Therefore, the Input Rate fixed at the beginning of the distribution period, quoted by the bidder, i.e., Decree Holder M/s. Shyam Indus shall remain a fixed Input Rate for the entire distribution period.

21. So far as Factor **D₁** is concerned, as per Clause 35.4.1, **D₁** means the base year tariff for the domestic category. The base year means the first year of the distribution period. Thus, factor **R** and **D₁** of the formula remained the fixed rates from the beginning of the distribution period and the first year of the distribution period, respectively, till the end. Hence, the rate calculated by Deepak Kumar Soni and Associates submitted vide its report dated 26.03.2024 to the Managing Director of the Electricity Company, is liable to be accepted as the input rate difference amount of Rs. 2,92,67,252/-, not the calculation submitted by the C.A. appointed by the decree holder Jain Gupta and Associates.

22. So far as the post award interest is concerned, the learned Arbitral Tribunal had allowed the claim of Rs. 1,56,80,554/- as the difference of the Input Rate and losses thereon Rs.21,37,315/-. Secondly, the difference in realizing the excess amount of input tax from 01.08.2010 till the completion of the distribution period. As per the above discussion, the aforesaid amount comes to Rs.2,92,67,252/-. As per para-34, the interest is liable to be paid @ of 9.5% on Rs.1,56,80,554/-, Rs.21,37,315/-, and Rs.2,92,67,252/-.

23. So far as the valuation of CAPEX amount, i.e., Rs.1,92,46,328/-, the same is not disputed by the MPMKVCL/Judgment Debtor. The controversy is about entitlement to get an amount of interest under Section 31(7)(b) of the A&C Act, 1996, by the Executing court, as the Award is silent about it. It is correct that the said section mandates imposition of interest @ of 18% (now 2%) on a sum directed to be paid by an arbitration award unless the award otherwise directs carry interest at some other rate. Admittedly, the learned Arbitral Tribunal had not awarded any interest on this CAPEX amount, and even the Tender Document nowhere provides reimbursement of CAPEX with interest.

24. The learned Commercial Court has rejected this claim on the ground that such a denial of post award interest ought to have been challenged by way of a Section 34 application. Learned counsel has placed reliance on a judgment passed by Apex Court in case of ***S.L. Arora and Company (supra)*** in which the Apex Court has held that if

the pre-award interest is at a much lower rate and if the award is silent regarding the post award interest, the claimant will be entitled to the post award interest at a higher rate of 18% per annum. The Apex Court has held that Clause (b) of Section 31(7) of the A&C Act, 1996, is intended to ensure prompt payment by the award debtor, once the award is made. There is no ascertainment and quantification of the CAPEX amount by the learned Arbitral Tribunal; only the Decree Holder has been held entitled to get as per the Tender condition. Even the Executing court has not ascertained the said amount, but has accepted the amount claimed by the Decree Holder. Hence, there was no delay on the part of the MPMKVCL/Judgment Debtor to make a payment of the CAPEX amount; hence question of grant of interest on this amount does not arise.

25. In view of the above discussion, these petitions are disposed of with a direction that the Commercial Court/Executing Court shall ascertain the amount still payable by the MPMKVCL/Judgment Debtor as per award passed by the Arbitral Tribunal.

(VIVEK RUSIA)

JUDGE

Shruti

(PRADEEP MITTAL)

JUDGE