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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **O.M.P. (COMM) 138/2018 & IA 4266-4267/2018**

ETERNITY FOOTWEAR LTD. (FORMERLY
KNOWN AS DIAMOND PRODUCT LTD.) Petitioner

Through: Mr S.K. Ray, Mr S.P. Sausan and
Ms Neetika Chaturedi, Advocates.

versus

THE ORIENTAL INSURANCE CO. LTD. Respondent

Through: Mr Pradeep Gaur and Mr
Himanshu Joshi, Advocates.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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03.04.2018

VIBHU BAKHRU, J

1. The petitioner has filed the present petition under Section 34 of the Arbitration and Conciliation Act, 1996 (hereafter 'the Act'), *inter alia*, impugning the arbitral award dated 03.11.2017 (hereafter 'the impugned award') to the limited extent that the Arbitral Tribunal has awarded interest at the rate of 15% per annum on the sum of ₹2,96,59,810/- from 05.05.2010 till 12.12.2010.

2. According to the petitioner, the said interest ought to have been awarded from 18.04.2010, that is, 30 days after the receipt of the

Surveyor's report. The petitioner also challenges the rate of post award interest. The Arbitral Tribunal has awarded post award interest at the rate of 9% p.a, which, according to the petitioner, is inadequate. It is contended that once the Arbitral Tribunal has found it fair to award interest at the rate of 15% in case of the delay in payment of the amount found due to the petitioner, the Arbitral Tribunal could not have whimsically reduced the same to 9% in case of post award interest.

3. Briefly stated, the aforesaid controversy arises in the context of the following facts:

3.1 The petitioner is engaged in manufacturing various types of footwear and has two manufacturing units at A-9, Mayapuri Industrial Area, Phase-II, New Delhi and other unit at village Moginand, Kala Amb, Nahan Road, District Sirmour, H.P. The petitioner had subscribed to a standard fire and special perils policy from the respondent (Oriental Insurance Co. Ltd. – hereafter 'the Insurance Company') for an assured sum of ₹24,25,00,000/- which was increased to ₹27,25,00,000/- with effect from 30.06.2008, in respect of its manufacturing units for the period from 20.03.2008 to 19.03.2009.

3.2 On 14.12.2008, a fire broke out at the manufacturing unit of the petitioner at Kala Amb, which resulted in severe damage to the building, plant and machinery, stocks, furniture and fixtures, fittings, computers and peripherals and other movables. The occurrence of the said event was reported to the Insurance Company by a letter dated 15.12.2008.

3.3 The Insurance Company appointed a Surveyor to assess the damage suffered. The said Surveyor visited the unit on 16.12.2008 and submitted a preliminary report dated 16.12.2008 estimating the loss of ₹12,00,00,000/-. In the meantime, the petitioner submitted a provisional claim on 10.01.2009 to the Surveyor for loss aggregating to ₹13,21,56,318/- in the prescribed format.

3.4 On 30.03.2009, an interim payment of ₹2,50,00,000/- was released by the Insurance Company to the petitioner. Thereafter, on 10.08.2009, the petitioner revised its claim to ₹12,02,31,749/-.

3.5 The Surveyor submitted its final report on 18.03.2010 assessing the total loss of ₹5,46,72,292/- and the petitioner was asked to provide a letter of consent for receiving the aforesaid amount.

4. It is the case of the petitioner that since it was in dire need of funds, on 05.05.2010, it submitted the letter of consent for receipt of an amount of ₹5,46,72,292/- against the actual loss of ₹12,02,31,749/-. Despite furnishing of the consent letter, the amount was not released within the prescribed time. It was finally released on 13.12.2010.

5. In view of the disputes, the parties invoked the arbitration clause and both the parties appointed their respective nominee arbitrators. The nominee arbitrators concurred in appointment of the presiding arbitrator.

6. The Arbitral Tribunal considered the aforesaid claims and awarded (i) Interest at the rate of 15% per year for the period 05.05.2010 - 12.12.2010 amounting to ₹27,05,950/- on the sum of ₹2,96,59,810/- paid

by the Insurance Company belatedly; (ii) A sum of ₹2,08,76,700/- on account of loss of stock; (iii) A sum of ₹75,000/- towards Cost of Litigation; and (iv) future interest at the rate of 9% per annum on the total award made amounting to ₹2,35,82,650/- (₹2,08,76,700/- plus ₹27,05,950/-).

7. As indicated above, the petitioner has challenged the impugned award, essentially, on two grounds. First, that the interest awarded on the sum of ₹2,96,59,810/- ought to have been computed from 18.04.2010. The learned counsel appearing for the petitioner referred to IRDA (Protection of Policyholder' Interest) Regulations, 2002, which, *inter alia*, provide that the Insurer shall be liable to pay interest at the rate of 2% above the prevalent bank rate, in certain circumstances. He drew the attention of this Court to Sub-regulation (5) and (6) of Regulation 9 of the said Regulations. which read as under:-

“9. Claim procedure in respect of a general insurance policy

(5) On receipt of the survey report or the additional survey report, as the case may be, an insurer shall within a period of 30 days offer a settlement of the claim to the insured. If the insurer, for any reasons to be recorded in writing and communicated to the insured, decides to reject a claim under the policy, it shall do so within a period of 30 days from the receipt of the survey report or the additional survey report, as the case may be.

(6) Upon acceptance of an offer of settlement as stated in sub-regulation (5) by the insured, the payment of the amount due shall be made within 7 days from the date of acceptance of the offer by the insured. In the cases of delay in the payment, the insurer shall be liable to pay interest at a rate which is 2% above the bank rate prevalent at the beginning of the financial year in which the claim is reviewed by it.”

8. It is apparent from the plain reading of Regulation 9(6) of the said Regulations that the Insurer would be liable to pay the amount within seven days upon acceptance of the offer by the Insured. In this case, the petitioner had submitted the consent for receiving the amount on 05.05.2010 and the Arbitral Tribunal has awarded interest at the rate of 15% per year from the aforesaid date. Thus, this Court finds no reason to interfere with the award of such interest with effect from 05.05.2010 till the date of payment.

9. The second ground urged by the petitioner relates to the award of post award interest. This Court is of the view that the post award interest is at the discretion of the Arbitral Tribunal and award of interest at the rate of 9% p.a does not warrant any interference by this Court. The post award interest is to provide the deterrent for early payment of the arbitral award. Thus, it is not necessary that the Arbitral Tribunal is ought to award post award interest at the same rate of the pre-award interest.

10. It is also trite law that the scope of judicial review under Section 34 of the Act is limited, and the court will not interfere with the decision of

the Arbitral Tribunal unless any of the grounds as stated under Section 34 of the Act are established. In the present case, the petitioner has sought to place its claim within the scope of Section 34(2)(b)(ii) of the Act. However, this Court is unable to accept that the Arbitral Tribunal offends the public policy of India on the grounds as urged on behalf of the petitioner.

11. The petition is, accordingly, dismissed. The pending applications also stand disposed of.

APRIL 03, 2018
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VIBHU BAKHRU, J

