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

+ **OMP (COMM.) 230/2018 & IA Nos. 7232/2018, 7233/2018
7234/2018**

THE UNITED INDIA INSURANCE CO. LTD. Petitioner
Through: Mr Pradeep Gaur, Advocate.

versus

M/S RISHABH & CO. PVT. LTD.Respondent
Through:

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER
% **23.05.2018**

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 12.12.2017 (hereafter 'the impugned award') delivered by the Arbitral Tribunal constituted by the sole arbitrator, namely, Sh A.K. Govil, appointed by the parties (hereafter 'the Arbitral Tribunal').

2. The impugned award was rendered in the context of the disputes that had arisen between the parties in respect of the insurance claim made by the respondent company against insurance policies issued by the petitioner.

3. The respondent is a company which is engaged, *inter alia*, in

the business of manufacturing perfumes and other industrial fragrances. The respondent purchased four insurance policies from the petitioner: (i) Standard Fire and Special Perils Policy No. 040603/11/13/11/00000494 for a sum of ₹54,12,000/- to cover stocks of all kinds; (ii) Standard Fire and Special Perils Policy No. 040603/11/13/11/00000423 for a sum of ₹50,00,000/- to cover stocks of all kinds; (iii) Standard Fire and Special Perils Policy No. 040603/11/13/11/00000697 for a sum of ₹35,50,000/- to ensure building with electrical fittings, cables, meter, FFF, equipment, etc.; and (iv) Standard Fire and Special Perils Policy No. 040603/11/13/11/00000245 for a sum of ₹16,50,000/- to ensure the building with electrical fittings, cable, meter, FFF, office equipment, P&M, tools, etc.

4. On 17.07.2014 at about 3.45 p.m., a fire broke out at the respondent's premises resulting in loss of stocks and damage to the premises as well as the furniture and fittings inside the premises. The respondent notified the occurrence of the said incident to the petitioner on 17.07.2014. The petitioner thereafter appointed M/s S. Soni & Company (hereafter 'the Surveyor') as the Surveyor to assess the damage suffered by the respondent. The respondent submitted a claim form claiming a loss of ₹2,04,51,233/-. The said amount comprised of ₹45,44,854/- as damage to the building; ₹96,000/- against loss of office equipment; ₹47,400/- as expenditure for removal of debris; and ₹1,57,62,979/- as loss of stock (raw material and finished goods). The respondent claims that it provided all the necessary documents to the

Surveyor for establishing its claim.

5. The Surveyor submitted its Final Survey Report dated 06.05.2015 (hereafter 'FSR'), which was received by the respondent on 19.05.2015. The FSR indicates that the Surveyor had assessed the amount payable to the respondent as ₹21,22,892.01/- against the claim of ₹2,04,51,233/-. However, the petitioner did not release the aforesaid amount and continued to raise queries. On 30.09.2016, the respondent filed a complaint with the Grievance Cell of the petitioner against non settlement of its claims. And, on 11.11.2016, the respondent filed a complaint with the Insurance Regulatory and Development Authority of India (IRDAI).

6. Thereafter, the petitioner appointed another surveyor, namely, M/s Sunglow Insurance Surveyors and Loss Assessors (P) Ltd. (referred to as 'the investigator') to reinvestigate and reassess the insurance claim made by the respondent. The respondent claims that it was once again compelled to provide all the documents as sought for by the investigator.

7. Finally, the petitioner approved the insurance claim for the sum of ₹20,16,575/- by an e-mail dated 22.02.2017 and also called upon the respondent to submit a certificate of full and final satisfaction for receiving the aforesaid amount. The respondent did not accept the same and invoked the arbitration clause by an e-mail dated 07.04.2017. The respondent nominated Mr A.K. Govil of MACK Insurance Surveyors & Loss Assessors Pvt. Ltd. to be appointed as a

sole arbitrator to adjudicate the disputes relating to the quantum of the amount payable to the petitioner against the insurance policies in question. The petitioner also accepted the said nomination as the Sole Arbitrator and the Arbitral Tribunal was constituted with the consent of the parties.

8. The Arbitral Tribunal passed an interim award directing the release of the admitted amount of ₹20,16,575/- in favour of the respondent. Thereafter, the Arbitral Tribunal passed the impugned award assessing the value of the damaged stocks at ₹1,51,49,623.90/-. The Arbitral Tribunal after carrying out the adjustments on account of dead and slow moving stocks, salvage value and under insurance computed net payable to the respondent against loss of stocks, at ₹89,80,634.07/-. Similarly, the Arbitral Tribunal assessed the net loss in respect of buildings, furniture and fixtures at ₹8,31,486.55/-. However, since the respondent had calculated the amount at ₹84,98,216/-, the Arbitral Tribunal limited the amount as claimed. Thus, the net loss was assessed at ₹93,29,702/-.

9. The Arbitral Tribunal also awarded interest at the rate of 12% per annum on the sum of ₹20,16,575/- from 06.06.2015 (i.e. thirty days after the receipt of FSR) to 05.06.2017 being the date of payment of the aforesaid amount. Similarly, the Arbitral Tribunal awarded 12% interest on the balance sum of ₹73,13,127/- from 06.06.2015 till the date of the impugned award. The Arbitral Tribunal also awarded future interest at the rate of 18% per annum on the awarded sum for the period commencing after thirty days of the date of the award.

10. Mr Pradeep Gaur, learned counsel appearing for the petitioner contended that the impugned award was patently illegal and was rendered by the Arbitral Tribunal without any evidence. He submitted that the respondent had not led any evidence in support of its claims and, therefore, the impugned award was liable to be set aside. He further contended that the award of future interest at the rate of 18% per annum was excessive and the same ought to be reduced.

11. He further submitted that the Arbitrator had not made the disclosure as required under Section 12 of the Act. He submitted that the Arbitrator was working as a surveyor and had been engaged by both the parties and, therefore, was disqualified to act as an arbitrator.

12. This Court finds no merit in the contention that the Arbitrator was disqualified to act as such. The petitioner was fully aware that the Arbitrator had been engaged by it as a surveyor and was also known to the parties. Accordingly, both the parties had signed an “Agreement of Waiver of Applicability of Section 12(5) of the Arbitration and Conciliation Act, 1996” and had submitted the same to the Arbitrator.

13. In the circumstances, the petitioner cannot be heard to object to the appointment of the Arbitrator.

14. The contention that the impugned award be set aside, as the respondent had not led evidence, is unpersuasive. It is seen that the Arbitral Tribunal had founded the impugned award on the statutory records maintained for Excise purposes (Registers in the form of RG1 and RG 23), the certificate issued by the Chartered Accountant for

providing the breakup of the closing stocks, and the audited accounts. More importantly, bulk of this material was also submitted to the Surveyor appointed by the petitioner and had been considered by the Surveyor for assessing the loss. It is trite law that the Indian Evidence Act, 1872 does not apply to arbitral proceedings and, therefore, there was no requirement for the respondent to formally lead further evidence in support of its claim. However, the respondent was bound to substantiate its claim by producing sufficient and reliable material, which it did. The material collected by the Surveyor on the basis of which the respondent's claims were assessed and the statutory records were sufficient for the Arbitral Tribunal to make the award.

15. It is also relevant to note that the respondent had not challenged any of the said records or data on which the respondent had founded the claim. On the contrary, the respondent had accepted the FSR submitted by the Surveyor, which in turn was undisputedly based on the material, as considered by the Arbitral Tribunal for making the impugned award. Admittedly, the petitioner had not challenged or raised any doubt as to the data provided by the petitioner.

16. It is well settled that the scope of judicial review under Section 34 of the Act is limited and – as authoritatively explained by the Supreme Court in *Associated Builders v. Delhi Development Authority: (2015) 3 SCC 49* – the arbitrator is the final adjudicator on questions of fact. Of course, if the arbitral award is based on no material or evidence, the same would be liable to be set aside under Section 34(2)(b)(ii) of the Act. However, in the present case, it is not

possible to accept that the impugned award is based on no material or evidence. The Arbitrator had analysed the records provided by the respondent and considered by the Surveyor in assessing the loss suffered by the respondent. Further, the learned counsel for the petitioner has been unable to point out any error in the manner in which the Arbitral Tribunal has analysed the material on record and computed the loss.

17. The submission that the future interest be reduced is also unmerited, as this Court is unable to accept that the interest awarded is unreasonable or warrants any interference under Section 34 of the Act.

18. The petition is, accordingly, dismissed. All the pending applications are also disposed of.

MAY 23, 2018
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VIBHU BAKHRU, J