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

Date of decision: 26th April, 2018

+ O.M.P. (COMM) 345/2017

M/S SHREEDHAR MILK FOOD LTD Petitioner
Through Mr.Sachin Datta, Sr. Adv. with
Ms.Ritika Jhurani and Mr.Dinesh
Sharma, Advs.

versus

M/S UNITED INDIA INSURANCE CO.LTD Respondent
Through Mr.Pradeep Gaur and Mr.Amit Gaur,
Advs.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (Oral)

1. This petition under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act') has been filed by the petitioner challenging the Arbitral Award dated 03.06.2017 passed by the Sole Arbitrator adjudicating the disputes that have arisen between the parties in relation to the "Standard Fire and Special Perils" Insurance Policy bearing Policy No. 040801/11/13/11/00000259, taken by the petitioner from the respondent for a sum of Rs.98.50 crores for the period 26.03.2014 to 25.03.2015.
2. On the night of 21.04.2014 a fire had broken out in the Milk Powder Godown of the petitioner's factory due to an electric short circuit. The respondent appointed M/s Soni & Company as surveyor to assess the loss on 22.04.2014. The proceedings before the surveyor are not relevant for the

present adjudication. What is relevant for the present adjudication is that on 17.03.2015 the petitioner addressed the following communication to the respondent:

*“Dear Sir,
PL.refer our above mentioned fire claim.
We are confirming the full and final fire claim amount of
Rs.9,77,28,656/- (Rs.Nine crores Seventy Seven Lacs
Twenty Eight Thousands Six Hundreds Fifty Six) Only.
Your fast co-operation is needed in regards.”*

3. The above document is sought to be relied upon by the respondent as a full and final discharge of the contract of insurance. On the other hand, it is the case of the petitioner that this document was given by the petitioner under duress and coercion, as without this document the respondent was not willing to release the claim amount in favour of the petitioner.

4. Even after the receipt of the above letter, the respondent had not released the said amount of Rs.9,77,28,656/- in favour of the petitioner, forcing the petitioner to address emails dated 30.04.2015 and 11.06.2015. In both of these emails, the petitioner asserted that it was facing acute financial crises due to delay in settlement of the claim amount by the respondent.

5. The respondent by its letter dated 18.06.2015 informed the petitioner that the competent authority of the respondent had approved the claim of the petitioner for a sum of Rs. 8,80,35,058/- and after deducting the reinstatement premium, the net amount payable to the petitioner was Rs.8,79,44,848/-. The respondent further called upon the petitioner to sign the Discharge Voucher for release of the said amount. The relevant quotation from the said letter is as under:

“You are, therefore requested to please send us the

disbursement voucher duly Discharge/signed affixing revenue stamp with company seal and submit the No Objection Certificate from your all banks whose interest is the in the policy.(PNB,OBC,ANDHRA BANK, BOI & CORP.BANK)

Since the payment of claim will be initiated in any one bank account you may also submit the No Objection Certificate from all banks that they do not have any objection to release the claim amount in any one bank account and put up your request to us to which bank account the payment will be initiated finally.”

6. The petitioner duly executed the disbursement claims voucher dated 18.06.2015. What is relevant in this Discharge Voucher is that it states that the petitioner has received an amount of Rs.8,80,35,058/- from the respondent. Admittedly, Rs.8,79,44,848/- was paid by the respondent to the petitioner only on 26.06.2015, that is, after the execution of this Disbursement Voucher. It is also evident from the contents of the letter dated 18.06.2015 of the respondent that the respondent would not have released the above payment without the petitioner having executed the Disbursement Voucher.

7. The petitioner by its email dated 03.07.2015 called upon the respondent to supply the copy of the surveyor report and also provide the reasons for the deductions made. The surveyor report was supplied by the respondent to the petitioner on 13.07.2015. Learned senior counsel for the petitioner submits that the surveyor report was supplied without the annexures annexed thereto.

8. The petitioner, on receipt of the surveyor report invoked the Arbitration Agreement vide its notice dated 29.07.2015 and upon failure of

the respondent to agree to the appointment of an Arbitrator, approached this Court by a petition under Section 11 of the Act being Arb. P.495/2015. The said petition was allowed by this Court vide its order dated 19.11.2015, *inter alia*, relying upon the circular dated 24.09.2015 issued by the Insurance Regulatory and Development Authority of India (IRDA) which advised the Insurance Companies that execution of Discharge Voucher does not foreclose the rights of the policy holder to seek higher compensation before any judicial fora or any other fora established by law.

9. In the arbitration proceedings, on 25.07.2016, the following issues were framed by the Sole Arbitrator:

“1. Whether deductions of 10% towards non-disclosure of material facts, of 6.81% towards under-insurance, of 2.5% towards dead stock and of 5% towards excess from the amount as assessed by the surveyor have erroneously and arbitrarily been made as alleged by the claimant?

2. Whether consent to the amount received from the respondent was given by the claimant under duress and coercion and/or being in acute financial crises as alleged?

3. Whether amount of Rs.8,79,44,848/- was paid towards full and final settlement of the claim as alleged by the respondent?

4. Whether claimant is entitled to interest? If so, at what rate, on which amount and for which period?

5. Relief.”

10. The Impugned Award answers only issue nos.2 and 3 and in view of the findings given thereon, the Arbitrator has not given any finding on issue nos.1, 4 and 5.

11. As would be evident from the issues, the issue nos.2 and 3 were whether the amount of Rs.8,79,44,848/- was received by the petitioner under duress and coercion or whether the petitioner has received full and final settlement of the claim as alleged by the respondent. The Arbitrator in the Impugned Award has held that as the witness of the petitioner, Mr. Anand Bihari Saxena, had admitted in his cross-examination that he was in regular touch with the Insurance Company regarding the settlement of the claim and was fully aware of the three figures of Rs.9,77,28,656/-, Rs.8,80,35,058/- and Rs.8,79,44,848/- and had not raised any protest on the letter dated 17.03.2015 being given under duress and coercion, it cannot be said that the same was given under duress or coercion. The Arbitrator therefore finds that the deduction of an amount of Rs.36,03,099/- towards variation factor @ 2.5%; Rs.55,20,588/- towards excess payment @ 5%, and Rs.75,08,772/- towards under-insurance @ 6.81% was well within the knowledge of the petitioner and the petitioner executed the letter dated 17.03.2015 out of its own free will. As far as the Discharge Voucher dated 18.06.2015 is concerned, while the Arbitrator takes note of the reason for making further deduction in the claim amount as alleged by the respondent, to be non-disclosure of material fact in the proposal form of the cold room being constructed and the fire having originated from the cold room due to loose electrical connection, in my opinion, the Award does not give any finding on whether the Discharge Voucher dated 18.06.2015 can also be said to have been executed by the petitioner with free will.

12. The relevant findings of the Arbitrator on the aspect of the Discharge Voucher dated 18.06.2015 are reproduced hereinbelow:

“Discharge voucher dated 18.6.2015 (copy at page 72) sent alongwith the letter of the same date (copy at page 71) intimating the approval of the claim amount of Rs.8,80,35,058/- is also alleged to have been taken under duress and coercion, by the claimant. Pursuant to the discharge voucher amount of Rs.8,79,44,848/- after deducting reinstatement premium of Rs.90,220/- was paid to the claimant on 26.6.2015. Claimant thereafter had sent letter on 3.7.2015 (copy at page 75) to the respondent requiring it to furnish the reasons for deductions and to supply copy of the survey report which the respondent did. Besides deductions towards variation factor, Excess, under-insurance, the claimant had deducted amount of Rs.97,81,673/- towards non-disclosure of material fact in the proposal form of the cold- room being constructed, the construction whereof was not completed till the time of fire as informed by the claimant vide their e-mail dated 26.11.2014. The fire was found to have originated from that cold-room from the loose electrical connection.

It is pertinent to mention that the claimant did not complain of the discharge voucher having been taken under duress or coercion immediately after the receipt of the above amount on 26.6.2015 or in the letter dated 3.7.2015. The reason seem to be that it was satisfied with the amount paid. In the backdrop of the aforesaid discussion, confirmation of full and final claim amount of Rs.9,77,28,658/- in the letter dated 17.3.2015 and omission to make any complaint to the said effect, I am not inclined to believe the case of the claimant that the discharge voucher was given by it under duress or coercion. Credit facility from banks was being enjoyed by the claimant much before the purchase of the insurance policy in this case. Delay in payment by the insurance company entitles the claimant only to claim interest at the penal rate. There cannot be any quarrel with regard to the law laid down in the said authorities relied on behalf of the claimant. However, the authorities are distinguishable on facts and are of not any help to the claimant.”
(Emphasis Supplied)

13. Based on the above finding, the Arbitrator answers the issue no.2 against the petitioner and in issue no.3 holds that the amount of Rs.8,79,44,848/- has been paid by the respondent towards full and final settlement of the claim of the petitioner.

14. As noted above, issue nos. 2 and 3 were whether the amount of Rs.8,79,44,848/- had been received by the petitioner under duress and coercion or whether the petitioner has received full and final settlement of its claim. This could have been decided against the petitioner only if the Arbitrator had found that the Discharge Voucher dated 18.06.2015 was executed out of free will and not under any coercion or financial duress. Even if this Discharge Voucher is found to have been executed by the petitioner out of free will, the effect thereof on the claim of the petitioner, especially in light of circular(s) issued by IRDA had to be considered. As noted above, in my opinion, the Arbitrator has not rendered any finding on this issue.

15. I have reproduced the above sequence of events leading up to the execution of the Discharge Voucher dated 18.06.2015 and the final payment on 26.06.2015. It is not the case of the respondent that the petitioner was made aware of the reason for further deductions after the letter dated 17.03.2015 had been taken from the petitioner settling his claim for a sum of Rs.9,77,28,656/-.

16. Learned counsel for the respondent submits that the petitioner was well aware of the reason for deduction as he was in regular touch with the Insurance Company. However, he has been unable to point out any letter showing such information being given to the petitioner. On the other hand, witness produced by the respondent, namely Vijay Sharma, in his cross

examination admits that it was the Higher Claims Committee (HCC) at the Head Office that had directed for further deductions to be made from the amount assessed by the surveyor and the HCC had no interaction with the insured in this regard. He was not even aware of the date on which the decision was taken by the HCC. In any case, these were the factors which had to be considered by the Arbitrator while giving his Impugned Award.

17. As noted above, the petitioner had written a letter dated 17.03.2015 purportedly accepting the settlement of its claim for Rs.9,77,28,656/-. The subsequent letters show that the petitioner was claiming to be in financial distress due to non-release of the amount. Further, the respondent vide its letter dated 18.06.2015 had clearly stated that the payment shall be released only upon the petitioner signing the Discharge Voucher, which was in a pre-printed form and which acknowledged receipt of payment, when admittedly the same was not made. Therefore, mere signing of this Discharge Voucher, under no circumstances can be said to mean payment received in full and final settlement of all claims by the petitioner. This Court in the Order dated 19.11.2015 passed in Arbitration Petition No.495/2015 filed by the petitioner under Section 11 of the Act had taken note of the circular dated 24.09.2015 issued by IRDA, which is reproduced hereinbelow: -

"Ref No.: IRDA/NL/CIR/Misc/173/09/2015

Date: 24th September, 2015

To

CEOs of all General Insurance Co.,

Circular

Reg: Discharge Voucher in settlement of claim.

The Insurance Companies are using 'discharge voucher' or "settlement intimation voucher" or in some other name, so that the claim is closed and does not remain outstanding in their books. However, of late, the Authority has been receiving complaints from aggrieved policyholders that the said instrument of discharge voucher is being used by the insurers in the judicial fora with the plea that the full and final discharge given by the policyholders extinguish their rights to contents the claim before the Courts.

While the Authority notes that the insurers needs to keep their books of accounts in order, it is also necessary to note that insurers shall not use the instrument of discharge voucher as a means of estoppels against the aggrieved policyholders when such policy holder approaches judicial fora.

Accordingly insurers are hereby advised as under:

Where the liability and quantum of claim under a policy is established, the insurers shall not withhold claim amounts. However it should be clearly understood that execution of such vouchers does not foreclose the rights of policyholder to seek higher compensation before any judicial fora or any other fora established by law.

All insurers are directed to comply with the above instructions." (Emphasis Supplied)

18. Learned counsel for the respondent has relied upon the circular dated 07.06.2016 to contend that the circular dated 24.09.2015 is no longer valid and could not be relied upon. A reading of the circular dated 07.06.2016 does not, in my opinion, support the contention made by the counsel for the respondent. The circular is quoted hereinbelow:-

"CIRCULAR

All CEOs of General Insurance Cos including Stand-alone Health Insurance Cos and Specialized insurance Cos

Re: Discharge Voucher Issue

This refers to the circular no-IRDA/NL/cir/Misc./173/09/2015 dated 24th September, 2015 on the captioned subject. Since then insurers, on various occasions, have submitted that the above circular is not in the line with the IRDA (protection of policyholders interests) Regulations, 2002 (PPI Regulations) and the Indian Contract Act.

The Authority has reviewed the matter taking into consideration the provisions of the Contract Act, PPI Regulations and Apex Court Judgments. Taking equal cognizance of the legal rights of the policy holders and insurers, the Authority hereby further directs that-

(i) Wherever there are no disputes by the insured/s or claimant/s to the amount offered by the insurer towards settlement of a claim, the present system of obtaining the discharge voucher may be continued. However, the insurers must ensure that the vouchers collected must be dated and complete in all respects while obtaining the signature/s of the insured/s or claimant/s.

(ii) If the amount offered is disputed by the insured/s or claimant/s, insurers would take steps to pay the amount assessed without waiting for the voucher discharged by the insured/s or claimant/s.

(iii) Under no circumstances the Discharge vouchers shall be collected under duress, by coercion, by force or compulsion. Since there is no uniformity in the format/wordings of the Discharge vouchers in use, Authority would suggest that the insurers may consider adopting a standardized format/wording/s of the Discharge voucher.

Insurers are directed to comply with the above with immediate effect.

*Sd/-
PJ Joseph
Member (NL)”*

(Emphasis Supplied)

19. In any case, a bare reading of the Impugned Arbitral Award would show that the Arbitrator has not referred to the circular dated 24.09.2015 and/or the circular dated 07.06.2016 issued by IRDA. These circulars would certainly have a bearing on the issues framed by the Arbitrator.

20. In ***National Insurance Company Limited vs. Boghara Polyfab Private Limited*** (2009) 1 SCC 267, the Supreme Court had given certain illustrations as to when claims are arbitrable and when they are not, on the ground of discharge of contract by accord and satisfaction. Illustrations (iii) and (iv) given by the Supreme Court would be relevant to the facts of the present case and are reproduced hereinbelow:-

“52. Some illustrations (not exhaustive) as to when claims are arbitrable and when they are not, when discharge of contract by accord and satisfaction are disputed, to round up the discussion on this subject are:

xxxxx

(iii) A contractor executes the work and claims payment of say rupees ten lakhs as due in terms of the contract. The employer admits the claim only for rupees six lakhs and informs the contractor either in writing or orally that unless the contractor gives a discharge voucher in the prescribed format acknowledging receipt of rupees six lakhs in full and final satisfaction of the contract, payment of the admitted amount will not be released. The contractor who is hard-pressed for funds and keen to get the admitted amount released, signs on the dotted line either in a printed form or otherwise, stating that the

amount is received in full and final settlement. In such a case, the discharge is under economic duress on account of coercion employed by the employer. Obviously, the discharge voucher cannot be considered to be voluntary or as having resulted in discharge of the contract by accord and satisfaction. It will not be a bar to arbitration.

(iv) An insured makes a claim for loss suffered. The claim is neither admitted nor rejected. But the insured is informed during discussions that unless the claimant gives a full and final voucher for a specified amount (far lesser than the amount claimed by the insured), the entire claim will be rejected. Being in financial difficulties, the claimant agrees to the demand and issues an undated discharge voucher in full and final settlement. Only a few days thereafter, the admitted amount mentioned in the voucher is paid. The accord and satisfaction in such a case is not voluntary but under duress, compulsion and coercion. The coercion is subtle, but very much real. The “accord” is not by free consent. The arbitration agreement can thus be invoked to refer the disputes to arbitration.”

21. The learned counsel for the respondent has placed reliance on the judgment of the Supreme Court in ***Union of India and Others vs. Master Construction Company*** (2011) 12 SCC 349, to contend that a bold plea of fraud, coercion, duress or undue influence is not enough and the petitioner must establish the same by placing material before the Arbitral Tribunal. The burden of proving the same is on the petitioner. He contends that in the present case, the petitioner had failed to discharge this burden of proof.

22. As noted above, though this may be the case of the respondent, however, the Arbitral Tribunal has not arrived at any finding on this issue one way or the other. There is no reference to the circulars issued by IRDA or emails dated 30.04.2015 and / or 11.06.2015 in the Impugned Award.

23. In any case, as the Arbitrator has not gone into the issue of the Discharge Voucher dated 18.06.2015 being issued under duress or out of free will, this Court need not dwell any further on this issue.

24. In *Associate Builders vs. DDA* (2015) 3 SCC 49, the Supreme Court while explaining the extremely limited grounds for interference with an Arbitral Award, has held that where finding of an Arbitrator is based on no evidence or the arbitrator ignores vital evidence in arriving at its decision, such decision would necessarily be perverse and fall foul of fundamental policy of Indian law. Non-mentioning of the IRDA circulars would also show a contravention of Section 28(1)(a) of the Act, which mandates the Arbitral Tribunal to adjudicate the disputes in accordance with the substantive law for the time being in force in India.

25. In view of the above, the Impugned Award is set aside leaving it open to the parties to take such appropriate legal remedy as may be open to them in law. In case any proceedings are initiated, petitioner shall be entitled to claim benefit of Section 43(4) of the Act for the purposes of limitation.

26. The petition is allowed in the above terms with no order as to cost.

NAVIN CHAWLA, J

APRIL 26, 2018/Arya/Rekha