

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY AND ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION**

COMMERCIAL ARBITRATION PETITION NO.71 OF 2017

M/s. Maa Ashish Textile Industries Private LimitedPetitioner

Vs.

National Insurance Company LimitedRespondent

WITH

COMMERCIAL ARBITRATION PETITION NO.153 OF 2017

National Insurance Company LimitedPetitioner

Vs.

M/s. Maa Ashish Textile Industries Private LimitedRespondent

Shri Rahul Narichania, senior advocate a/w. Ms. Varsha Ramann and Shri Shavez Mukri i/b. India Law for petitioner in CARBP/71/2017 and for respondent in CARBP/153/2017.

Shri A.S. Vidyarthi and Ms. Ruchika Dave i/b. Asim Vidyarthi for respondent in CARBP/71/2017 and for petitioner in CARBP/153/2017.

**CORAM : K.R.SHRIRAM, J.
RESERVED ON : 25.04.2019
PRONOUNCED ON : 03.06.2019**

P.C.:

1 Both the parties to the arbitration proceedings have filed petitions under Section 34 of the Arbitration and Conciliation Act, 1996 (the said Act) impugning the award dated 20.10.2016 passed by the sole Arbitrator. Claimant in the arbitral proceedings - M/s. Maa Ashish Textile Industries Private Limited is, for convenience, referred to herein as petitioner and National Insurance Company Limited is, for convenience, referred to herein as respondent.

2 Petitioner had lodged their claim in two parts, (a) for a sum of Rs.1,95,08,797/- being part of the claim amount not paid together with interest thereon and (b) interest on delayed payment of part of the claim amount. The first part of the claim for Rs.1,95,08,797/- was rejected by the Arbitrator, which part of the award has been impugned in this petition by petitioner and the Arbitrator allowed the second part of petitioner's claim, viz., interest on delayed payment, which part has been challenged by respondent in its petition. It is settled law that the principle of severability is applicable to an arbitral award (*R.S. Jiwani, Mumbai v Ircon International Ltd., Mumbai*)¹ where the Full Bench of this Court held that the power vested in the Court under Section 34(1) and 34(2) should not be construed rigidly and restrictedly so as to prevent the Court from setting aside an award partially.

3 Petitioner, in its arbitration petition no.71 of 2017, seeks to challenge the award on the limited point that the Arbitrator's rejection of petitioner's claim of Rs.1,95,08,797/- is perverse, riddled with contradictions and inconsistencies. Respondent, in its arbitration petition no.153 of 2017, has challenged the award of interest on delayed payment of the claim in favour of petitioner.

4 In my view, the claims of petitioner in the arbitral proceedings are severable and both are two separate and distinct claims. Interfering with

1. 2010 (1) Mh.L.J. 547

the findings of the Arbitrator in one issue will not affect, in fact or in law, the finding arrived at by the Arbitrator on the other issue. In my view, the claim of Rs.1,95,08,797/- for the balance amount is distinct and separate from the claim for interest on delayed payments. Moreover, both the counsel did not question severability. Shri Narichania in fact, argued for it and Shri Vidyarthi did not contest.

5 Respondent had issued a Standard Fire and Special Insurance Policy to petitioner dated 26.05.2010. The period covered was between 24.05.2010 and 23.05.2011. Insured valued was Rs.20,78,56,204/-. The risk covered was petitioner's building, machinery, stocks, etc.

6 A fire broke out in petitioner's factory on 21.03.2011, pursuant to which a claim was raised by petitioner under the policy. Respondent appointed surveyors M/s. Rakesh Narula & Co. (Rakesh Narula) on 21.03.2011 itself, who submitted a Preliminary Survey Report on 22.03.2011. Subsequently, respondent appointed M/s. J. Basheer and Co. (J. Basheer) as Joint Surveyor (together referred to as 'the Surveyors') and after assessing petitioner's losses, the Surveyors submitted a Final Survey Report dated 03.08.2011, quantifying the loss at Rs.17,63,78,222/-. Petitioner agreed to this assessment. Allegedly on the basis of another Final Survey Report dated 29.10.2011 and an Addendum Report dated 31.07.2012, respondent subsequently reduced the claim amount to

Rs.15,81,22,177/- of which a sum of Rs.15,68,69,425/- was paid to petitioner on 04.12.2012 as full and final settlement vide discharge vouchers. Petitioner state they signed these discharge vouchers under coercion and without prejudice to their right to recover the unlawful deduction of Rs.1,95,08,797/-. Petitioner invoked arbitration seeking payment of Rs.1,95,08,797/- as well as interest on the belated payment of the claim. The Arbitrator passed an award dated 20.10.2016 (hereinafter 'the Award'), of which one part is impugned by petitioner and the other part by respondent, rejecting petitioner's claim of Rs.1,95,08,797/- but awarded interest on delayed payment of the claim in favour of petitioners.

7 In all there were four survey reports issued. The first one, issued by Rakesh Narula, was called Preliminary Survey Report dated 22.03.2011 issued within one day of the loss, Final Survey Report dated 03.08.2011 issued within five months of the loss where the loss was assessed by the Surveyors to be Rs.17,63,78,222/-, the third Final Survey Report dated 29.10.2011 issued seven months after the loss where the loss was assessed by the Surveyors to be Rs.17,44,90,989/- and the fourth report called Addendum Report dated 31.07.2012 (the Addendum Report) issued by the Surveyors one year four months after the loss where the loss assessed was reduced to Rs.15,81,22,177/-. Last report, i.e., the Addendum dated 31.07.2012 is the root cause for this dispute.

8 Before we proceed further, it will be useful to reproduce regulations 9(2), (3), (4), (5) and (6) of the IRDA (Protection of Policyholder's Interests) Regulations, 2002 (the IRDA Regulations), which read as under :

9. Claim procedure in respect of a general insurance policy

(2) Where the insured is unable to furnish all the particulars required by the surveyor or where the surveyor does not receive the full cooperation of the insured, the insurer or the surveyor as the case may be, shall inform in writing the insured about the delay that may result in the assessment of the claim. The surveyor shall be subjected to the code of conduct laid down by the Authority while assessing the loss, and shall communicate his findings to the insurer within 30 days of his appointment with a copy of the report being furnished to the insured, if he so desires. Where, in special circumstances of the case, either due to its special and complicated nature, the surveyor shall under intimation to the insured, seek an extension from the insurer for submission of his report. In no case shall a surveyor take more than six months from the date of his appointment to furnish his report.

(3) If an insurer, on the receipt of a survey report, finds that it is incomplete in any respect, he shall require the surveyor under intimation to the insured, to furnish an additional report on certain specific issues as may be required by the insurer. Such a request may be made by the insurer within 15 days of the receipt of the original survey report.

Provided that the facility of calling for an additional report by the insurer shall not be resorted to more than once in the case of a claim.

(4) The surveyor on receipt of this communication shall furnish an additional report within three weeks of the date of receipt of communication from the insurer.

(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.

9 Therefore, Regulation 9 of the IRDA Regulations *inter alia* states (i) The surveyor appointed by the insurer shall communicate his findings to the insurer within 30 days of his appointment, with a report if he so desires; (ii) A surveyor shall not take more than 6 months from his date of appointment to furnish his report; (iii) If the insurer finds that the report issued is incomplete in any respect, he may obtain an additional report on specific issues as may be required. Such a request may be made by the insurer within 15 days of receiving the original survey report; (iv) The insurer may call for such a clarificatory additional report from the surveyor only once; (v) Upon receipt of the additional report, the insurer shall offer a settlement of the claim to the insured within 30 days; and (vi) Once the assured accepts the offer of the insurer, payment of the claim must be made by the insurer within 7 days of the date of acceptance of the offer by the assured, failing which the insurer must pay interest at 2% above the prevailing bank rate in the financial year in which the claim is reviewed by it.

10 The Regulations passed by the IRDA, including the IRDA (Protection of Policyholders' Interests) Regulations, 2002 are binding on all insurance companies². This has also been admitted by the counsel for respondent at the time of the oral hearing. Only the Preliminary Survey Report of 22.03.2011 and the Final Survey Report of 03.08.2011 are within

2. Union of India V/s. Manubhai Dharmasinhbhai Gajera and Ors. (2008) 10 SCC 404

the timeline as prescribed by the Regulations. The Final Survey Report of 29.10.2011 and the Addendum Report of 31.07.2012 are, therefore, in violation of the provisions of Regulation 9.

11 The Arbitrator has refused petitioner's claim for Rs.1,95,08,797/- by relying upon the Addendum Report and by holding that petitioner accepted a sum of Rs.15,81,22,177/-. According to petitioner, the Arbitrator has arrived at such a finding by either relying on no evidence or relying on irrelevant evidence not germane to the issue and ignoring vital evidence clearly establishing the contrary. Shri Narichania relied upon the judgment of the Apex Court in ***Associate Builders V/s. Delhi Development Authority***³ where paragraph 31 reads as under :

31. The third juristic principle is that a decision which is perverse or so irrational that no reasonable person would have arrived at the same is important and requires some degree of explanation. It is settled law that where -

(i) a finding is based on no evidence, or

(ii) an Arbitral Tribunal takes into account something irrelevant to the decision which it arrives at; or

(iii) ignores vital evidence in arriving at its decision, such decision would necessarily be perverse.

12 The Arbitrator has held that the Final Survey Report dated 29.10.2011 and the Addendum Report dated 31.07.2012 were not challenged by petitioner in the statement of claim but were challenged by petitioner only in the rejoinder mainly on the ground that copies of those

3. 2015 (3) SCC 49

reports were never served on petitioner. The Arbitrator has called the first witness of petitioner (CW1) - Shri Gopal Agarwal as a liar noting that Shri Agarwal falsely stated in the cross examination that he received the Addendum Report only on 06.03.2014 whereas he had already received it when petitioner had filed a petition under Section 11 of the said Act. The Arbitrator has also observed that petitioner has not raised any allegation with regard to the Addendum Report dated 31.07.2012 in the statement of claim and the evidence of Mr. Gopal Agarwal (CW-1) cannot be relied upon.

13 I am conscious of the fact that the scope for interference under Section 34 is very narrow and unless the Court comes to a conclusion that the decision was perverse or so irrational that no reasonable person would have arrived at the same, the Court should not interfere. I find the Arbitrator's views rather perverse and he has taken into account something irrelevant and has also ignored the vital evidence to arrive at his decision.

14 Shri Narichania submitted that the Arbitrator has ignored vital evidence in arriving at its decision and has also taken into account something irrelevant to the decision in which he has arrived at. Shri Narichania also submitted that there are various contradictions in the award which shows non application of mind and all these lead to perversity.

15 Shri Vidyarthi submitted that there was no perversity in Arbitrator rejecting the claim of petitioner for Rs.1.95 Crores but there was perversity in awarding interest on delayed payment. He further submitted that the scope for the Court to interfere with the arbitral award has been narrowed under Section 34 and it has further being tightened by *Associate Builders (Supra)*. Respondent submitted, on petitioner's claim, that no part of the award is against public policy or perverse or irrational that no reasonable person would come to the same conclusion and there was no illegality in the award.

16 As regards the challenge by respondent to the arbitral award awarding the claim of petitioner for interest on delayed payment of the undisputed claim amount, respondent submitted that there was no propriety in awarding interest wherein the basic claim of petitioner was disallowed. It is further contended that the Arbitrator could not have passed directions restricting the period of payment and awarding 12% interest p.a. to petitioner till full payment is made. Respondent relied upon the judgment of the Apex Court in **Vedanta Ltd. V/s. Shenzen Shandong Nuclear Power Construction Company Ltd.**⁴ to submit that the award of interest at the rate of 12% is far too excessive and penal in nature. Respondent submitted that to the extent Arbitrator has allowed the claim for interest on delayed payment, the award should be set aside.

4. 2018 SCC Online SC 1922

One thing that I could sum up from the rival submissions is that the award is severable.

17 Heard the counsel and also considered the award and pleadings. My findings are as follows :

Addendum Report dated 31.07.2012 was disclosed by respondent for the first time in its affidavit in reply in the Section 11 proceedings before this Court. The Final Survey Report dated 03.08.2011 was the only survey report furnished by the Surveyors within the time limit prescribed under the IRDA Regulations and it was only the assessment under the said Final Survey Report of 03.08.2011 which was explained to and accepted by petitioner. In light of the same, petitioner based its entire claim in its statement of claim on the said Final Survey Report dated 03.08.2011. Respondent in its statement of defence did not deny the Final Survey Report dated 03.08.2011 but relied entirely on the Final Survey Report dated 29.10.2011 and the Addendum Report to put forward its case. In such a situation, it was only at the stage of filing its rejoinder and affidavit of evidence that petitioner first had the opportunity to deny and object to the material contained in these documents. Petitioner has consistently denied the two reports, in its rejoinder, affidavit of evidence of CW1 as well as in CW1's cross examination.

18 The Arbitrator has failed to consider the material evidence on record while coming to the conclusion that save for bare denials of the purported Final Survey Report of 29.10.2011 and the Addendum Report dated 31.07.2012, petitioner did not make any allegations against the said documents. The Arbitrator also erroneously holds that petitioner has not dealt with the Addendum in the statement of claim and merely denied it in the rejoinder to the statement of defence. The Arbitrator has ignored various instances in the statement of claim, rejoinder, affidavit of evidence and in cross examination of CW1 where petitioner has categorically denied the validity and/or existence of the Final Survey Report of 29.10.2011 as well as the Addendum Report. Petitioner has also categorically stated that respondent at no point in time provided any explanation with regard to the arbitrary deductions in petitioner's claim.

19 In the statement of claim in paragraph 10 it is stated as under :

10. Therefore, the Respondents total settlement offer was Rs.15,68,69,425/- as against Surveyor's assessment of Claimants' claim at Rs.17,63,78,222/-. The Respondents offered no explanation for the arbitrary deduction.

20 In petitioner's rejoinder in paragraphs 15, 18 and 19 it is stated as under :

15. The Claimants vehemently deny that the alleged revised, net loss assessment was discussed with Mr. Gopal Agarwal and he concurred with aforesaid revised assessment and put the Respondents to strict proof thereof. The Claimants once again deny knowledge of purported survey report dated 29/10/2011. It is pertinent to note that the Respondents have failed to produce the said survey report or even dispute the copy of survey report

annexed by Claimants as Exhibit "B" to the Statement of Claim. Further, the Claimants deny the Addendum Report dated 31/07/2012. The Respondents once again suppressed the said Addendum Report from the Claimants. The Claimants came to know about existence of an addendum first time during the Section 11 of Arbitration & Conciliation Act proceedings before the Hon'ble High Court, Bombay. It appears that the Respondents have forced the Addendum Report through the Surveyors. The Surveyors themselves appear to disagree with Respondents dictation. The Claimants state that the assessments of their claims, as worked out in the Surveyor's Final Survey Report dated 29/10/2011 as well as Addendum report dated 31/07/2012, against the damaged building, plant and machines, stocks and other insured properties are wrong and on illegal basis.

.....

18. The Claimants deny that after due deliberation and discussions with the Claimants a total settlement amount of Rs.15,68,69,425/- was arrived between the parties and put the Respondents to strict proof thereof.....

19. the Claimants deny that the Respondents addressed letter dated 4/12/2012 to the Claimants for the simple reason that the Respondents have explained to the Claimants about the basis of arriving at the final settlement amount of Rs.15,68,69,425/-. The Claimants reiterate that the Respondents never informed the Claimants about the purported final survey report dated 29/10/2011, the Addendum dated 31/07/2012 and the Respondents' further deductions in the claim.

21 In CW1's affidavit of evidence in paragraphs 19 and 20 it is stated as under :

19. I say that along with the reply, the Respondents for the first time produced an addendum report to a survey report dated 29/10/2011. I deny knowledge of purported survey report dated 29/10/2011 assessing Claimants loss to the tune of Rs.17,44,90, 989/-. The final survey report as provided to the Claimants by the Respondents is dated 3/08/2011 assessing loss at Rs.17,63,78,222/-. I say that the Claimants are shocked and surprised to note that the Respondent and their appointed Surveyors have concealed crucial documents and facts relating to their claim assessment from the Claimants. It appears that the Respondents and Surveyors unilaterally changed/alterd the final survey report. The Claimants were never given an opportunity to explain the wrongful unilateral deduction. It is pertinent to note that the Claimants at all times in all their written and oral representation to the Respondents stated that their final claim assessment by the Surveyors is Rs.17,63,78,222/-, which the Respondents or Surveyors have never denied, objected or given clarification/correction. The final assessment as per survey report dated 3/08/2011 was referred to the Claimants and the Claimants had accepted the said assessment. I deny the purported survey report dated 29/10/2011 and the assessment of claim

therein and also the addendum report dated 31/07/2012.

20. I submit that the Respondents and the Surveyors have indulged in malpractice and connived with each other to deprive the Claimants of their rightful claim and opportunity to represent them. I say that the alleged revised, net loss assessment was never discussed with me or with any other representative of the Claimants. I further say that I was neither given a copy of the survey report dated 29/10/2011 and addendum report dated 31/07/2012 nor informed about existence of any other such documents. It is pertinent to note that the Respondents have failed to produce the said survey report dated 29/10/2011 before this Hon'ble Sole Arbitrator. Further, the Claimants deny the Addendum Report dated 31/07/2012.

22 In the cross examination of CW1 question nos.162 and 163 and answers thereto, read as under :

Q.162) Did you receive copy of Survey Report dated 29th October 2011 and the Addendum Report dated 31st July, 2012 before you drew up and filed your Affidavit in lieu of Examination-in-chief dated 10th April, 2014?

A. No.

Q.163) Can you tell from the Addendum Report dated 31st July, 2012 (Exhibit R-5) which parts/portions you did not understand?

A. I do not understand the entire Addendum Report and more particularly the calculations, as it was never discussed with me by the Surveyors. Further, in every calculation they have made a remark "calculations as per Head Office instructions" or "assessment as per H.O. e-mail". There is no explanation of formula or Surveyors' independent views. It seems that the Surveyors were forced to deduct the assessment amount.

23 Petitioner's witness CW1 has, in his affidavit in lieu of examination in chief, in paragraph 21, denied the Addendum Report on merits disagreeing with every head of claim and the Arbitrator has ignored vital evidence by dismissing petitioner's counter to the Addendum Report as a bare denial. This would certainly fall under the third limb contemplated under paragraph 31 of the decision of the Supreme Court in Associate Builders (Supra) - "ignores vital evidence in arriving at its decision."

24 The Arbitrator in gross error records that while CW1 - Shri Agarwal stated that he received 'these reports' on 06.03.2014, the Court order passed in the Section 11 proceedings records that the Surveyor's Addendum Report was given to petitioner for the first time in the Section 11 proceedings. There is no evidence to even remotely suggest that CW1 stated that the Addendum Report was received on 06.03.2014.

 The Arbitrator has entirely disregarded the evidence on record, that the Court order refers to the Addendum Report being provided to petitioner during the Section 11 proceedings and not the Final Survey Report dated 29.10.2011. The witness, CW1, in cross examination has also stated that he received the Addendum for the first time during the arbitral proceedings. It is pertinent to note that CW1 was not confronted with his statement in his affidavit of evidence where he stated that the Addendum Report was received only in the Section 11 proceedings. Had he been confronted with his testimony in paragraph 19 of his affidavit of evidence, he would have explained his answer. In any case, petitioner, vide CW1's affidavit of evidence also agrees that petitioner received the Addendum Report for the first time during the Section 11 proceedings. Therefore, not only is the timeline of petitioner obtaining the Addendum Report wholly irrelevant to establishing its validity, but it also does not prove whether the contents and calculations of the Addendum Report were explained to and agreed by petitioner. The Arbitrator has, therefore, relied on irrelevant

evidence to arrive at the conclusion regarding the validity and acceptability of the Addendum Report. Such a finding of the learned Arbitrator squarely falls within the second ground contemplated by *Associate Builders (Supra)*, i.e., taking into account something irrelevant to the decision which it arrives at and is therefore, perverse.

25 The Arbitrator has upheld the validity of the Addendum Report and has arrived at the conclusion that the loss assessment thereunder was explained to and discussed with petitioner further solely on the basis of the testimony of J. Basheer (RW1), which the Arbitrator has, in gross error, considered to be unchallenged by petitioner. The Arbitrator has ignored material and relevant questions put to RW1 by petitioner in cross examination on this point which disputed his testimony. It will be useful to reproduce question nos.71 and 72 and answer thereto in the cross examination of RW1 which read as under :

Q.71) I put it to you that the amount of Rs.15,68,69,425/- was not accepted by the Claimants as full and final discharge of their claim. What do you have to say?

A. No. It is not correct.

Q.72) I put it to you that you have falsely stated that the Claimants representative was present and gave verbal concurrence before release of the so called addendum report. What do you have to say?

A. No. It is not correct.

Thus evidence of J. Basheer has not gone unchallenged as stated in the award. The award is, therefore, perverse for ignoring material

evidence.

26 Further, the Arbitrator, while upholding the validity and acceptability of the Addendum Report, has failed to take into consideration the fact that the Addendum Report was engineered by respondent, and the surveyors' own reservations in following the directions prescribed to them by respondents vide their letter dated 07.03.2012 and the emails dated 05.07.2012, 19.07.2012 and 27.07.2012, to reduce petitioner's loss assessment.

The Surveyors clearly mention as follows in the Addendum Report, indicating that respondent has engineered the Addendum Report and has forced the Surveyors to arrive at a lower loss assessment against their own better judgment :

Building Assessment :

As mentioned earlier, we again reiterate that our Assessment of Building Loss sent vide our Joint Final Survey Report is based upon the physical verification of damaged area.

.....

The RCC constructed is mentioned in report as 90,000 sq. feet which is about 8,361 sq. mtrs. The total RCC area mentioned in the report of Bank of Baroda is much more than the area assessed by us. So, the area considered in our earlier loss assessment is correct.

As suggested that the surveyors should consider 4450 Sq. Metres as the Building area, we give our Assessment for 4450 Sq. Metres and the underwriter may take final decision as they may deem fit.

Particulars	<u>Building Assessment as per our Joint Final Survey Report</u>	<u>Building Assessment as per National Insurance Co. Ltd. Head Office Email dtd.</u>	Ratio

<i>Total Area</i>	<i>5,416.71</i>	<i>4,450.00</i>	<i>82.15</i>
<i>Gross Assessed Loss</i>	<i>34,144,095.00</i>	<i>28,050,462.87</i>	<i>82.15</i>
<i>Less Salvage Value</i>	<i>4,348,428.00</i>	<i>3,572,372.27</i>	<i>82.15</i>
<i>Less Depreciation</i>	<i>4,311,251.27</i>	<i>3,541,830.40</i>	<i>82.15</i>

(emphasis supplied)

27 It is evident that the Surveyors maintain their assessment as being correct but change it only because of the pressure and/or insistence of respondent. Respondent had no right to do so since it was the sole prerogative of the Surveyors to issue an uninfluenced and unbiased report. Shri Vidyarthi for respondent submitted that the reports of the Surveyor are only recommendatory and are not binding on insurance company. Respondent relied upon Section 64 UM (2) of Insurance Act, 1938 to submit that nothing shall be deemed to take away or abridge the right of the insurer to pay or settle any claim at any amount different from the amount assessed by the approved surveyor or loss assessor. That, however, has not been their stand in the arbitration proceedings. The stand of respondent has been that the Surveyors in the Addendum Report dated 31.07.2012 have processed the claim for the amount mentioned therein and that amount was accepted by petitioner. Therefore, points which have not been raised in the arbitral proceedings cannot be raised in a Section 34 petition. In any event, if Surveyors reports are not binding on them, the onus was upon respondent to prove Surveyors were wrong. Respondent

cannot on one breath rely on Surveyors addendum to reduce petitioner's legitimate claim and in the same breath say the reports are not binding on them and it is only recommendatory. It creates an absurd situation.

28 Moreover, the IRDA Regulations permit an insurer to ask for a further report from its surveyors only if the earlier reported submitted is incomplete. In the present case, it is nobody's contention that the Final Survey Report dated 03.08.2011 or the Final Survey Report dated 29.10.2011 were incomplete. Respondent, vide its letter dated 07.03.2012 and emails dated 05.07.2012, 19.07.2012 and 27.07.2012 raise queries with regard to the correctness of the loss assessment in the Final Survey Report dated 29.10.2011 and ask for the quantification of loss to be reduced. Respondent has, therefore, violated the IRDA Regulations on this ground alone. The Arbitrator has thus ignored vital evidence on record while coming to the aforesaid conclusions, falling within the third limb of the aforementioned paragraph 31 of *Associate Builders* and therefore, the Award to such extent is perverse and is liable to be set aside. The Hon'ble Supreme Court of India, in ***Sumitomo Heavy Industries Limited V/s. Oil and Natural Gas Corporation***⁵ has held as follows:

"This Court has already laid down as to which finding would be called perverse. It is a finding which is not only against the weight of evidence but altogether against the evidence. This Court has held in Triveni Rubber & Plastics v CCE [AIR 1994 SC 1341] that a perverse finding is one which is based on no evidence or one that no reasonable person would have arrived at. Unless it is found that some relevant evidence has not been considered or

5. (2010) 11 SCC 296

that certain inadmissible material has been taken into consideration the finding cannot be said to be perverse.”

29 This Court, in ***Union of India V/s. M/s. Sarathi Enterprises***⁶, has held that where the findings rendered by the learned arbitrator are inconsistent and contradictory, there is patent illegality on the face of the award and the award is perverse and must be set aside. The Arbitrator has arrived at inconsistent and contradictory findings in the award which demonstrate non-application of mind by the Arbitrator. The Arbitrator on the one hand, in paragraph 32 of the award upholds the validity of the purported Addendum Report and holds that petitioner have accepted the settlement sum of Rs.15,81,22,177/-. At the same time, however, the Arbitrator, at paragraph 23 of the Award, accepts that a joint survey report dated 03.08.2011 was issued, whereby the loss was assessed as Rs.17,63,78,222 and that the surveyors called petitioner's representative Shri Gopal Agarwal (CW1), discussed the report with him, pursuant to which petitioner had agreed to finalise the sum of loss at Rs.17,63,78,222/-.

30 In direct contradiction of his findings in paragraph 32 of the award, the Arbitrator proceeds to simultaneously find that the Addendum Report has been issued in violation of the timeline and other conditions prescribed in Regulation 9 of the IRDA Regulations. The Arbitrator comes to the conclusion that after the Final Survey Report was issued on 03.08.2011,

6. 2015 SCC Online Bom 1511

the Final Survey Report dated 29.10.2011 was issued pursuant to certain queries raised by respondent. The Arbitrator proceeds to hold that a further second query (which was issued by respondent almost 4 months after receiving the Final Survey Report dated 29.10.2011) which is not contemplated under Regulation 9, resulted in the Addendum Report. The Arbitrator thus arrives at the finding in paragraph 35 of the award that respondent has violated the IRDA Regulations. By acknowledging that the Addendum Report was issued in contravention of the IRDA Regulations (which are binding on insurance companies) but at the same time permitting respondent to rely on the same to substantially reduce petitioner's claim, the Arbitrator has allowed respondent to take advantage of its own violation of the law. The Arbitrator, in paragraph 36 of the award, has once again recognised the Final Survey Report dated 03.08.2011 as the valid survey report and states that petitioner, after a meeting with the Surveyors on 09.08.2011, has accepted the settlement of Rs.17,63,78,222/-. The Arbitrator also proceeds to record that such amount of Rs.17,63,77,222/- ought to have been paid by respondent to petitioner within 7 days from 09.08.2011, as required by the IRDA Regulations. This is inconsistent with the Arbitrator's findings in paragraph 32 of the award where he holds that petitioners agreed to accept the sum of Rs.15,81,22,177/- as the settlement sum.

31 The Arbitrator has, on the one hand, held that there has been no accord and satisfaction or full and final settlement of the claim by virtue of petitioner signing the discharge vouchers for the sum of Rs.15,68,69,425/- but thereafter proceeds to hold that petitioner accepted the sum of Rs. 15,81,22,177/- under the purported Addendum Report. The two findings are contradictory in nature and cannot co-exist. This indicates, with due respect, non-application of mind. The findings rendered by the Arbitrator with regard to petitioner's claim of Rs.1,95,08,797/- are inconsistent and contradictory which reflects patent illegality on the face of the award. The findings rendered by the Arbitrator in respect of petitioner's claim of Rs.1,95,08,797/- can be termed perverse and set aside.

32 Petitioner's claim for interest on delayed payment of the undisputed claim amount is a separate and distinct claim from the claim of Rs.1,95,08,797/-. The Arbitrator has taken the IRDA Regulations into consideration and has arrived at the conclusion that the queries issued by respondent dated 07.03.2012 as well as the resultant Addendum Report were issued belatedly and in violation of the timelines prescribed in Regulation 9 of the IRDA Regulations. Respondent made part payment of Rs.5 Crores to petitioner on 17.04.2012, i.e., nearly 13 months after the date of the loss, whereas the IRDA Regulations stipulate that the claim ought to be settled by the insurer within 7 days of the assured accepting the

settlement offer. Since petitioner accepted the amount of Rs.17,63,78,222/- at the meeting held on 09.08.2011, respondent ought to have settled the claim on or before 16.08.2011. Moreover, balance amount of Rs.10.68 Crores were paid to petitioner only on 06.12.2012, i.e., 21 months after the date of the loss.

33 In the circumstances, the Arbitrator has justly awarded interest in favour of petitioner on delayed payment of the undisputed claim amount of Rs.15,68,69,425/- at 12% p.a. till 17.04.2012 (when part payment of Rs.5 crores was made by respondent) and interest at 12% p.a on the balance of Rs.10,68,69,425/- from 17.04.2012 till 06.12.2012. With a view to protect the interests of petitioner and considering the already undue delay of respondent in settling petitioner's claim, the Arbitrator has rightly awarded further interest of 12% p.a., should respondent not pay the awarded sums within 1 month of the award. The counsel for respondent cited the decision of the Apex Court in *Vedanta Ltd. (Supra)* in support of respondent's contention that the award of interest at the rate of 12% is far too excessive and penal in nature. The facts in the present case, however, are entirely different from those in *Vedanta Ltd. (Supra)*. The said decision is not applicable to the case at hand. In fact, this Court in ***Ashirwad Projects V/s. Addhar Mercantile Pvt. Ltd.***⁷ has considered the decision in *Vedanta Ltd. (Supra)* and held that *Vedanta Ltd. (Supra)* was an

7. Arbitration Petition no.1295 of 2015, Order dated 30th January 2019

international commercial arbitration, where challenge to interest awarded by the Tribunal was considered in the peculiar facts and circumstances of the case as also the specific clause of the contract. The Court proceeded to hold as under :

“In the present case, the arbitration was a domestic arbitration between two Indian parties and there was no foreign currency component of the award. The claim was made in Rupees and the award was also in Rupees.... The arbitrators, therefore, considered interest rates in India and not LIBOR rate and accordingly, determined 12 per cent per annum to be a reasonable rate of interest. There is no infirmity in this assessment of the learned arbitrators. The assessment is reasonable and exhibits a possible view. It is not a view that no fair or judiciously minded person would take or a view which would shock the conscience of the court. Thus, there is no case for interference with the award on the rate of interest.”

34 In *Steeman Ltd. V/s. State of H.P. and Ors.*⁸ the Apex Court held that a petition to set aside an arbitral award does not permit the Court to interfere in matters pertaining to interest granted by the arbitrator. Moreover, the Arbitrator not only has the power to award pre-reference interest (*Godrej Properties and Investments Ltd. V/s. Tripura Construction*)⁹, but in the present case, has also exercised his discretion in awarding interest at 12% p.a. Once that discretion is exercised, it cannot be said that the decision is unreasonable.

35 In the circumstances, petition no.71 of 2017 is allowed and therefore, the award to the extent of dismissing petitioner's claim for Rs.1,95,08,797/- is set aside. Respondent's petition no.153 of 2017 is dismissed. Therefore, the award to the extent of awarding interest on the

8. (1997) 9 SCC 252

9. 2003 SCC Online Bom 13 at paragraph 10

delayed payment is upheld.

36 Both petitions accordingly disposed.

(K.R. SHRIRAM, J.)