IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.892 OF 2014

Reliance General Insurance Co. Ltd. ... Petitioner
Versus
NRC Limited ... Respondent

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Mr. Samir A. Vaidya for the Petitioner.
Mr. Mikhail Behl a/w Mr. Yohaan Rubens & Ms. Sheetal Mote I/b Vigil Juris for the Respondent.

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CORAM : S.C. GUPTE, J.

DATE : 17 JANUARY 2019

<u>P. C.</u> :

. The petition challenges an award passed by an arbitral tribunal of three arbitrators in a reference arising out of an insurance contract.

2 The Petitioner, who was the original respondent in the arbitral reference, is a private general insurance company. The Respondent company (original claimant) was looking for coverage under a special contingency policy. The Respondent had another coverage under a policy issued by National Insurance Company Ltd ("NICL"). For the same sum insured, the Respondent negotiated with the Petitioner for another special contingency policy concurrent with the coverage under NICL policy. The Respondent paid the insurance premium on such policy, against which the Petitioner issued a 'held covered note'. The held covered note *inter alia* confirmed that the coverage was concurrent with the policy issued by NICL "for the same wording and the same period". The insured amount was

Rs.2 crores. As the Respondent suffered loss due to labour unrest at its factory causing cessation of work, upon intimation of such loss, the Petitioner and NICL jointly appointed surveyors to assess the loss. The surveyors assessed the loss. By their final survey report dated 23 May 2007, the surveyors put the loss at Rs.1,02,89,289, to be settled under the two policies and on the terms and conditions set out therein. After assessing the loss and determining the contributions as between the two insurers, namely, the Petitioner and NICL, surveyors held that as for the Respondent's share of loss at the rate of 50% of the total assessed loss, there had to be deduction made on account of underinsurance. This deduction was said to be applicable under condition No.6, which is known as an 'average clause' under the insurance policy. This clause provided that if the insured property be found to be collectively of greater value than the sum insured thereon, the insured shall be considered as being his own insurer for the difference and shall bear a rateable proportion of the loss accordingly. The surveyors held that the total assets at the insured location were to the tune of Rs.365 crores, that is to say, there was underinsurance of Rs.363 crores, i.e. 99.45 per cent. Thus, deducting such underinsurance percentage from the loss, and making an adjustment of the policy deductibles of Rs.10,000/-, the net claim worked out as payable by the Petitioner was only Rs.45,467. The Petitioner claimed to have paid this amount and sought discharge. The matter was carried before the arbitral tribunal in a reference.

3 The learned arbitrators in their impugned award held that the Petitioner had agreed to provide a special contingency coverage to the Respondent concurrent with and for the same wording and period as the

NICL policy; the terms and conditions of NICL policy did not admit of any average clause; the tribunal held that given the competition in the insurance industry, though the claimant ought to have made enquiries, it cannot be faulted for accepting both policies, i.e. policy of NICL and the Petitioner in good faith according to the agreement arrived at during negotiations and the held cover note issued by the Petitioner; no carelessness or acquiescence on its part could be inferred, given the duty of insurance companies to act in good faith, especially after issuing of a held cover note. The arbitrators held that inclusion of clause 6 by the Petitioner was a departure from the negotiations. Clause 6 finds no place in the held cover note and was never pointed out specifically by the Petitioner. The arbitrators, in the premises, awarded the Respondent's claim in the sum of Rs.98,91,029 along with interest at the rate of 9 per cent per annum.

4 Learned Counsel for the Petitioner submits that the arbitrators had before them the insurance policy issued by the Petitioner, which included clause-6 known as 'average clause' in insurance parlance. It is submitted that clause-6 provided for the case of underinsurance; it was to the effect that if the insured property be found to be collectively of greater value than the sum insured thereon, the insured would be considered as being his own insurer for the difference and would bear a rateable proportion of the loss accordingly. Learned Counsel submits that the Respondent must accordingly be held to have underinsured its property by 99.45 % and accordingly entitled to only the sum of Rs.45,467.

5 The effect of clause-6 of the insurance policy, in the light of what was negotiated between the parties, and what was reflected in the held

cover note issued by the Petitioner, was a matter for the arbitrators to decide. If the conclusion drawn by the arbitrators is a reasonable conclusion denoting a possible view and not an impossible view or a view which no fair or judiciously minded person would take or a view that would shock conscience of the court, there is nothing for the challenge court to interfere with under Section 34 of the Arbitration and Conciliation Act, 1996. That is how the law of challenge to an arbitral award has been stated by the Supreme Court in the case of **Associate Builders Vs. Delhi Development Authority**[1] **.**

6 Coming now to the interpretation of the insurance contract, in particular clause-6 thereof, the learned arbitrators drew the following conclusions : (i) the Respondent was insuring all its assets on co-insurance basis with two insurance companies, i.e. NICL and the Petitioner, the former being the lead insurer and the latter a co-insurer; (ii) the Respondent desired to have similar policies from NICL and the Petitioner and accordingly had negotiations with them; (iii) the Respondent was already having a policy issued by NICL, and the second policy also had to be issued on similar terms ; in the talks between the Respondents on the one hand and the representatives of NICL and the Petitioner on the other, there appeared to be no discussion for inclusion of clause-6 in the policy; (iv) the held cover note stated that the Petitioner's policy was concurrent with NICL policy for the same wording and period and it did not include clause-6; (v) clause-6 was admitted to be included subsequently, i.e. not only after negotiations but also after issuing the held cover note; (vi) it was included without drawing attention of the Respondent to its inclusion

1 AIR 2015 SC 620

in the policy document. The arbitrators observed that after insertion of clause 6, the coverage would stand reduced to only about 0.5% of the cover and this was clearly not the intention of the parties. The arbitrators noted that the Petitioner had not led any evidence or examined any witness and the Respondent's evidence in this behalf had remained uncontroverted. The arbitrators also negatived the argument of the Petitioner based on the difference in premium rates. The arbitrators held that insurance was a highly competitive field and, particularly in non-tariff segments, difference in premium rates would not entitle the Petitioner to deviate from the terms agreed upon and recorded in the held cover note. The arbitrators held that in the absence of any indication of absence of good faith on the part of the Petitioner, the Petitioner could not be held liable for want of carefulness or not checking minutely terms of a policy document. The arbitrators held that omission to check the policy document carefully would not disentitle the Respondent to the principal amount of the claim but could well reflect on the rate of interest and period for which interest was to be granted. The arbitrators, accordingly, granted an award of principal sum with interest only for *pendente lite* period and at a mere 9 per cent per annum.

7 The analysis of the learned arbirators and findings arrived at by them are clearly possible views. There is nothing impossible or shocking about their analysis or conclusions. The policy document has been interpreted reasonably. The award is supported by evidence. It does not, thus, call for any interference under Section 34 of the Act.

8 Accordingly, there is no merit in the challenge. The Arbitration Petition is dismissed. The parties to bear their own costs.

(S.C. GUPTE, J.)