$~49

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

\+ W.P.(C) 7958/2018

M/S PRO-INTERACTIVE SERVICES (I) PVT. LTD. ..... Petitioner

Through: Mr Animesh Sinha, Advocate.

versus

M/S THE NEW INDIA ASSURANCE CO. LTD. AND & ORS. ….. Respondents

Through: Mr Vivek Goyal, CGSC with Mr Ram Krishan Kumar and Mr Nirmaljit Singh, Advocates for R-2.
Mr P. K. Seth, Advocate for respondent.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

O R D E R

% 11.07.2019

1. The petitioner has filed the present petition, *inter alia,* praying as under:-

> "a. Issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ quashing and setting aside the Endorsement No.13130046110982000003 (**Annexure L (colly)**], through which Respondent No.1 unilaterally, arbitrarily, unfairly and unreasonably modified the Excess clause of both policies obtained by the Petitioner.
>
> b. Hold and declare that Respondent No.1 had no statutory authority or power to disregard the Surveyor Report regarding the Petitioner's claim for losses incurred in Kanchipuram, as communicated to the

Petitioner vide e-mail dated 15.09.2016 **(Annexure R).**

c. Hold and declare that the Respondent No.1 should pay the sum total of unlawfully deducted amounts, amounting to ₹42,77,686/- (Rupees Forty-Two Lakhs Seventy-Seven Thousand Six Hundred and Eighty-Six Only), along with interest upon the said amount at the rate of 18% per annum."

2. The petitioner had purchased two floater type insurance policies, being a Money Insurance Policy and a Fidelity Guarantee unnamed policy from the respondent, which were effective for a period of one year from 01.07.2011. The said policies were renewed, for a further period of one year.

3. The petitioner claims that it had suffered losses at various sites (namely, Varanasi, Uttar Pradesh; New Delhi, Hubli and Karnataka) and, accordingly, made claims under the said policies. It is the petitioner's contention that the said claims were not settled to the full extent and the respondent has unjustifiably deducted certain amounts, which is arbitrary and unreasonable. The deductions disputed by the petitioner have been made on two grounds: (i) deduction of an amount equivalent to 5% from the claim as excess required to be paid by the insured and (ii) deduction of 25% of the recommended claim on account of suspicion.

4. The petitioner claims that in terms of the policy, the excess required to be borne by the petitioner was not 5% but only ₹50,000/-. It is stated that the respondent company had made an endorsement amending the terms of the policy and had not communicated the same to the petitioner. The petitioner claims that it had received the communication of the endorsement sometime in 2016, which is much after the policies had expired and the

claims have been settled.

5. The petitioner also states that the failure on the part of the respondent company in not paying the entire amount recommended by the surveyor, cannot be justified.

6. The learned counsel appearing for the respondents have countered the aforesaid contentions. First, he submits that this petition has been filed belatedly. He states that the claims were settled during the years 2013-15 and the petitioner has not raised any protest at the time of accepting the amounts as settled, and therefore the insurance contract stood discharged by accord and satisfaction. He states that the petition is an afterthought. He also counters the submissions that the respondent company was not entitled to withhold 25% of the recommended amount on account of suspicion.

7. It is seen that the issues raised are contractual disputes and involve disputed questions of fact. This Court does not consider it apposite to entertain this controversy in these proceedings. The petition is, accordingly, dismissed.

8. It is open for the petitioner to avail of alternative remedies.

9. All contentions of the parties are reserved.

VIBHU BAKHRU, J

JULY 11, 2019
MK