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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	17.12.2020
Pronounced On	25.01.2021

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HON'BLE MR.JUSTICE C.SARAVANAN

O.S.A.No.89 of 2020
and
C.M.P.No.3670 of 2020

(Through Video Conferencing)

Ms. Oriental Insurance Company Limited,
Rep. by its Regional Manager,
Regional Office, UIL Building,
4th Floor, No.4, Esplanade,
Chennai - 600 018.

... Appellant

Vs.

M/s.Monotech Systems Ltd.,
Represented by its Managing Director,
Third Floor, City Centre,
66, Thirumalai Pillai Road,
T.Nagar, Chennai - 17.

... Respondent

Original Side Appeal filed under Order XXXVI Rule 9 of O.S.Rules read with Clause 15 of the Letters Patent read with Section 37 of the Arbitration and Conciliation Act and read with Section 13 of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts (Amendment) Act, 2018 to set aside the fair and decretal order dated 04.12.2019 passed by the learned Single Judge in O.P.No.823 of 2019.

For Appellant : Mr.M.V.Swaroop

For Respondent : Mr.R.Yashod Vardhan, Senior Counsel
for Mr.R.Ashwanth

J U D G M E N T

This Original Side Appeal is directed against the impugned order dated 04.12.2019 passed by the learned Single Judge in O.P.No.823 of 2019.



2. O.P.No.823 of 2019 was filed against award dated 09.03.2019 under Section 34 of the Arbitration and Conciliation Act, 1996 by the appellant herein. The Arbitral Tribunal consisting of three Arbitrators by a majority, awarded a sum of Rs.4,08,82,566/- to the respondent together with interest at the rate of 9% p.a. from the date of the award till the date of realization.

3. By the impugned order, the learned Single Judge has dismissed O.P.No. 823 of 2019 filed by the appellant herein under Section 34 of the Arbitration and Conciliation Act, 1996.

4. The operative portion of the impugned order passed by the learned Single Judge is reproduced below:-

11. The records were examined and the oral submissions of both sides were considered carefully. Upon perusal of the Award, I find that the findings with regard to under-insurance are based on a reasonable interpretation of clause 10 of the General Conditions of the Floater Policy as also the Floater Clause. In this regard, it should be borne in mind that the Floater Policy was drafted by the Petitioner/Insurance Company and, therefore, any ambiguity should be resolved in favour of the insured and not the insurer by applying the interpretive rule of contra proferentem, as held by the Hon'ble Supreme Court, in the context of an insurance contract, in paragraphs 9-13 of Industrial Promotion and Investment Corporation of Orissa Ltd. v. New India Assurance Company Ltd. (2016) 15 SCC 315. With specific reference to clause 10, as correctly contended by the learned senior counsel for the Respondent, the said clause would not be rendered otiose if it is interpreted as being applicable on a location-specific basis as regards the Floater Policy subject to the condition that it would be applied to all the locations wherein the contingency occurs and this is precisely how the Arbitral Tribunal interpreted it. Another important facet is that the Floater Policy does not stipulate that the sum insured should be apportioned across the 17 locations, proportionately, on the basis of the value of machinery at each location. In the absence of such stipulation, can such a term as to apportionment be implied? In my view, implying such term would be contrary to the Floater Clause, which indicates that a higher premium is paid for the Floater Policy, and more



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importantly, that the sum insured (SI) would be available in aggregate for one, more or all locations. In addition, the test of business efficacy, which is a test of necessity, is also not satisfied in this case because the Floater Policy is, undoubtedly, workable without implying such term. The judgments of the Hon'ble Supreme Court in *Nabha Power Ltd. v. Punjab State Power Corporation Ltd.* (2018) 11 SCC 508 and *Adani Power (Mundra) Ltd. v. Gujarat Electricity Regulatory Commission* 2019 SCC Online SC 819 may be referred to in this context. Therefore, the findings of the Arbitral Tribunal, in this regard, are not liable to be interfered with.

12. The findings of the Arbitral Tribunal that the deduction in respect of the dead stock is not justified is based on an appraisal of available evidence. Such evidence was available in the form of the sales data of machines, including machines that were sold after two years. Consequently, there is no justification for interfering with the said findings in a petition under Section 34 of the Arbitration Act on the ground that the evidence, in that regard, is insufficient.

13. The rejection of the 5% per year depreciation by the Arbitral Tribunal is based on a correct understanding of the accounting principle that the concept of depreciation is not applicable to stock-in-trade or inventory and only applies to capital assets. As regards the submission of the learned counsel for the Petitioner that the label, depreciation, was merely a mis-description or misnomer, as correctly pointed out by the learned senior counsel for the Respondent, in any case, only the purchase price was taken into consideration and not the value addition or refurbishment cost. Consequently, even the diminution in value is indirectly factored in the decision of the Arbitral Tribunal and a case is not made out for interference under Section 34 with this finding. As regards salvage, in the absence of fixed standards or benchmarks, the application of the rate of 10% is not unreasonable and does not warrant interference under Section 34 of the Arbitration Act. The principles laid down in cases such as the *Harsolia* case and the *Excess Insurance* case, which were relied upon by the learned counsel for the Petitioner, to the



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effect that a contract of insurance is a contract of indemnity and that, consequently, such contracts enable recovery of loss and not profits are, without doubt, sound and established principles but they do not advance the cause of the Petitioner because the Respondent was directed to be indemnified for loss and not in respect of loss of profits by the Arbitral Tribunal.

14. For the reasons set out above, I do not find any reason to interfere with the Award. Consequently, the petition to set aside the Award dated 09.03.2019 is dismissed. As a corollary, the Respondent is entitled to the sum deposited by the Petitioner in fixed deposit pursuant to the interim order dated 21.10.2019 in A.No.7887 of 2019, without providing a security in this regard, along with interest accruals thereon, and to initiate execution proceedings for the remainder of amounts due and payable as per the Award. Accordingly, A.No.7887 of 2019 is disposed of by directing the Registrar General of this Court to encash the fixed deposit and pay the proceeds thereof, along with interest accruals, to the Respondent. No costs.

5. It is the correctness or otherwise of the above reasoning of the learned Single Judge which is put to test before us under Section 37 of the Arbitration and Conciliation Act, 1996 before us.

6. The respondent had taken two insurance policies both dated 06.02.2015 from the appellant to cover the risk in 17 godowns belonging to it.

7. One of them was a floater policy covering a risk for a sum of Rs.9 Crores in 17 godowns of the respondent which included its Ambattur godown.

8. The 2nd policy was fixed policy for a sum of Rs.10 Crores which was exclusively taken to cover the risk at its Ambattur godown.

9. The appellant herein an insurance company had challenged the aforesaid award passed by the Arbitral Tribunal on the ground that the Arbitral Tribunal had wrongly awarded the aforesaid sum of Rs.4,08,82,566/- to the respondent over and above a sum of Rs.1,86,83,228/- paid by the appellant to the respondent.



10. The respondent suffered loss of its "stock in trade" stored at its Ambattur Godown due to the flood that ravaged the City of Madras during December 2015. The respondent estimated the total loss at Rs.17.11 Crores.

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11. Originally, the respondent lodged a claim for a total sum of Rs. 10,50,15,946/-. The Surveyor appointed by the appellant assessed a net loss of Rs.1,97,28,636.96 suffered by the respondent.

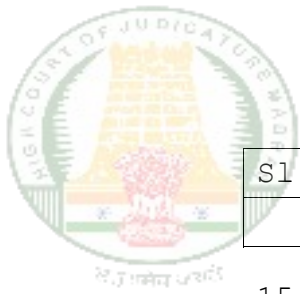
12. The surveyor assessed a Gross Loss on RIV basis for a total sum of Rs4,57,72,417.00 after excluding a sum of Rs.2,43,00,526.00 towards "dead stock" out of the total claim of Rs. 10,50,15,946/- of the respondent.

13. While arriving at the above net loss of Rs.1,97,28,636.96, the surveyor made few deduction as detailed below:-

Sl.No.	Particulars	Amount (Rs.)
1	Insured's claim	10,50,15,946.00
2	Gross Loss Assessed RIV basis	4,57,72,417.00
3	Less : Depreciation	1,33,03,708.00
4	Market Value	3,24,68,709.00
5	Less : Salvage	71,43,115.98
6	Net Adjusted Loss	2,53,25,593.02
7	Less: Underinsurance @ 18	45,58,606.74
8	Adjusted Loss	2,07,66,986.28
9	Less: Excess @ 5%	10,38,349.31
10	Net Adjusted Loss	1,97,28,636.96

14. The appellant however settled a sum of Rs.1,86,83,228/- as detailed below:-

Sl.No.	Particulars	Amount (Rs.)
1	Insured's claim	10,50,15,946.00
2	Surveyor's assessment	4,57,72,417.00
3	Less: Depreciation	1,33,03,708.00
4	Less Salvage	84,85,104.00
5	Sub Total	2,39,83,605.0
6	Less: Under Insurance @ 18%	43,17,048.90
7	Adjusted Loss	1,96,66,556.10
8	Less: Excess @ 5%	9,83,327.80



Sl.No.	Particulars	Amount (Rs.)
9	Net Adjusted Loss	1,86,83,228.00

15. The appellant took a stand that the claim of the respondent was to be reduced under the following four heads:-

Heads	Amount sought to be denied by the Surveyor appointed by the appellant (Rs.)	Amount sought to be denied by the appellant (Rs.)
Dead Stock	2,43,00,526.00	2,43,00,526.00
Depreciation	1,33,03,708.00	1,33,03,708.00
Salvage	71,43,115.00	84,85,104.00
Under insurance	45,48,606.74	43,17,048.00
Policy Excess		9,83,327.80
Total	4,92,95,955.74	5,13,89,713.00

16. The respondent received the aforesaid sum of Rs.1,86,83,228/- under protest and invoked the arbitration clauses in the respective insurance policies before the Arbitral Tribunal.

17. Before the Arbitral Tribunal, the respondent restricted the net claim for a sum of Rs.4,78,89.860/- after adjusting a sum of Rs.1,86,83,228/- already received by it as detailed below:-

Prepress Machines*	: Rs.5,06,75,363/-
Signage*	: Rs.1,34,54,079/-
Konica Minolta / Digital*	: Rs. 59,43,501/-

	: Rs.7,00,72,943/-
Less Policy Excess 5%	: Rs. 35,03,647/-

Net Amount Payable	: Rs.6,65,69,296/-
Less Amount offered	: Rs.1,86,79,436/-

Balance loss payable under the Policies
for Flood Damage to Stocks and claimed
in the Arbitration proceeding : Rs.4,78,89,860/-



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18. The Arbitral Tribunal which consisted of three members, framed the following issues for its consideration:-

- i. Whether the claim before the arbitral tribunal is maintainable as there is no dispute or a valid claim in existence for adjudication through arbitration?
- ii. Whether the Claimant is entitled to a sum of Rs.4,78,89,860/- towards damage to stocks in the floods under Policy Nos.41190/11/2015/448 (Ex.C4) & 411900/11/2015/447 (Ex.C2)?
- iii. Whether the claim is liable to be dismissed due to non joinder of necessary party i.e. the banker whose interest is incorporated in the policy?
- iv. What is the sum insured under the Policy issued by the respondent for the claimant / insured's Ambattur unit / premises as on the date of loss?
- v. What is the validity of a survey under Section 64 UM of the Insurance Act, 1938?
- vi. Whether the assessment of Rs.1,97,28,567/- by Surveyor as per Survey Report is legal and justified based on proper method of assessment, facts and interpretation of policy terms?
- vii. Whether the Surveyor is justified in excluding several machines insured under the Policy as "dead stock" is justified and valid in the facts and circumstances of the case?
- viii. Whether the Surveyor is justified in applying depreciation @5% upto 75% based on the age of the machines?
- ix. Whether the Surveyor is justified in concluding "under insurance" when the Claimant has insured the stock under two policies for a total sum of Rs.19 Crores?
- x. Whether the insurer is justified in offering and settling the claim for Rs.1,86,79,436/- under the two insurance policies as true and proper indemnity as against the claim for Rs.4,78,89,860/- by the Claimant, in total, towards loss or damage to stocks in flood?
- xi. Whether the Claimant is entitled to interest on the admitted sum of Rs.1,36,79,436/- paid belatedly by the insurer at 18% per annum from the date of loss 15.11.2015 till belated payment made on 10.05.2017?
- xii. Whether the Claimant is entitled to interest liability for a sum admissible and payable by insurer under the two insurance policies? And if so, for what period and at what rate of interest?
- xiii. Whether the Claimant is entitled to cost of Rs.3,00,000/- incurred for initiating arbitration proceedings under Section 11 of Arbitration and



Conciliation Act, 1996 and the cost of present proceedings from the insurer?

19. The contention of the appellant and the respondent before the Arbitral Tribunal are captured as below:-

- i. Dead Stock: It was submitted that the stock destroyed in the flood consisted of dead stock purchased between the period 2011 and 2013 which had not been sold. They were purchased under the buyback scheme of the respondent.
- ii. As per the surveyor's report, the value of such stock was Rs.2,43,00,526/-. It was therefore submitted that the appellant was entitled to disallow the aforesaid value from the total claim of the respondent.
- iii. Before the Arbitral Tribunal, the respondent had produced Exhibit C.8 to substantiate its case that these goods had potential for being sold. On the other hand, it is the contention of the appellant that Exhibit C.8 revealed very few instance of sale and out of them only one was sold with a marginal profit.
- iv. It was therefore submitted that the Arbitral Tribunal committed a grave error in disallowing the disallowance for a sum of Rs. 2,43,00,526/- from the total claim of the respondent and therefore, the award was vitiated on account of "patent illegality" within the meaning of Section 34(2A) of the Arbitration and Conciliation Act, 1996.
- v. Depreciation:- The claim for a sum of Rs.1,33,03,708/- was sought to be disallowed by the appellant on the ground of depreciation. The Surveyor had applied depreciation at the rate of 5% to 75% based on the age of the machine as on the date of loss due to the flood.
- vi. It was the contention of the respondent that no depreciation can be applied for stock in trade as they are not capital goods.
- vii. The Arbitral Tribunal by majority has disallowed the objection of the appellant on the ground that there is no provision for applying depreciation on the stock in trade and therefore, the calculation of loss by the surveyor for the stock in trade kept by the respondent was not proper.
- viii. Salvage:- The Surveyor in his report in Exhibit C9 had stated that an action was initiated for disposal of the machines lost in the flood. However, they could not get any response. The Surveyor therefore recommended deduction at the rate of 22% from the claim



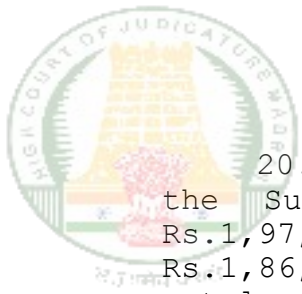
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amount towards the salvage value based on the age of the machines.

- ix. The Arbitral Tribunal however found that the deduction at 22% towards salvage value was very high and abnormal and restricted it to 10%.
- x. Under Insurance:- Before the Arbitral Tribunal, the appellant stated that there was under insurance by the respondent in as much as the total value of the loss at the Ambattur Godown was estimated at Rs. 17.11 Crores.
- xi. The cumulative value of the risk covered by the two insurance policies was for a sum of Rs.19 Crores. It was the contention of the appellant before the Arbitral Tribunal that they were justified in deducting a sum of Rs.43,17,049/- based on the report of the Surveyor on the ground that the risk covered under the floater policy for Rs.9 Crores was to be proportionately reduced and distributed to the value of the stock in all the 17 godowns of the respondent and since the Ambattur godown had stock over and above the risk, as there was under insurance by the respondent.
- xii. In this connection, reference was made to relevant paragraph of the Floater Policy. It was submitted that the sum insured in the floater policy was available for anyone, more, or all location as specified in respect of the movable property and that at all times during the currency of the policy, the respondent was required to have maintained a good internal audit and accounting procedure under which the total amount at risk and the location can be established at any point of time. A reference was also made to clause 10 of the policy which reads as under:-

"..... If the property hereby insured shall at the breaking out of any fire or at the commencement of any destruction of or damage to the property by any other peril hereby insured against be collectively of greater value than the sum insured thereon, then the insured shall be considered as being his own insurer for the difference and shall bear a rateable proportion of the loss accordingly... .."

The arbitral tribunal by a majority concluded that there was no justification in deducting any amount towards "under insurance".



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20. The Arbitral Tribunal concluded that assessment of the Surveyor and the recommendation to pay a sum of Rs.1,97,28,567/- to the respondent and payment of Rs.1,86,83,228/- by way of addendum report in Exhibit R3 were not legal and proper.

21. The Arbitral Tribunal thus by a majority allowed a sum of Rs.4,08,82,566/- to the respondent by holding that the appellant was not justified in deducting amount towards the loss suffered by the respondent on account of dead stock, salvage, depreciation and under insurance.

22. The appellant challenged the aforesaid award passed by the Arbitral Tribunal under Section 34(2A) of the Arbitration and Conciliation Act, 1996 before this Court.

23. As mentioned above, the learned Single Judge declined to interfere with the award passed by the Arbitral Tribunal and has thus upheld the award passed by the Arbitral Tribunal.

24. It is the contention of the learned counsel for appellant that the learned Single Judge failed to note that the Arbitral Tribunal committed a cardinal error in allowing claim even though the appellant was not liable to indemnify the respondent over and above the amount settled under the policies for the loss suffered by the respondent.

25. It is submitted that under the respective policies, the appellant was required to indemnify the respondent only on the value of the stock as on the date of the loss/destruction and not on the purchase value. It is therefore submitted that the Arbitral Tribunal committed a patent illegality in allowing the claim of the respondent.

26. In this connection, the learned counsel for the appellant relied on the decision of the Hon'ble Supreme Court in Ssangyong Engineering and Construction Company Limited Vs. National Highways Authority of India, (2019) 15 SCC 131 which explained the scope of amended Section 34(2-A) of the Arbitration and Conciliation Act, 1996.

27. It was submitted that under the insurance law, it is the value on the date of loss/destruction that would be relevant for the purpose of settling the claim and not the value on the date of purchase.

28. It is therefore submitted that the Arbitral Tribunal failed to note the well-settled principles of law while awarding the amounts to the respondent. It is further submitted that under Section 28 of the Arbitration and Conciliation Act, 1996, the Arbitral Tribunal is required to take into account not only the terms of the contract but also trade usage as was applicable to the transactions.



29. The learned counsel for the appellant drew our attention to Floater Policy as defined by the General Insurance Corporation of India. He further drew attention to Mac Gillivray On Insurance Law, 11th edition published by Sweet & Maxwell and Thomson Reuters.

30. The learned counsel for the appellant submitted that where there is a total loss, the amount payable to the assured will be the value of the thing at the time of loss. It is further submitted that as per the above text, the undamaged value before the losses has to be taken at the market value immediately before the loss occurred although the value taken in cases of marine insurance is the value at the time of commencement of the risk whereas this principle is not extended to fire risk. It is therefore submitted that claim cannot be settled on the purchase value.

31. It is further submitted that an assured is not entitled to take the cost price or the cost of construction or manufacture as conclusive evidence of the value of the property at the time of the destruction.

32. The learned counsel for the appellant drew our attention to some of the case laws rendered in the context of the insurance law and valuation of the stocks for the purpose of computation of compensation and for the purpose of Income Tax Act, 1961. They are as follows:-

- i. Harsolia Motors Vs. National insurance Co Ltd 2005 (1) CPC 53 Manu/CF/0083/2004;
- ii. CIT Vs. Huges Communication India Ltd. (2013) 33 Taxmann. Com; [2013] 215 Taxman 136 Delhi, wherein, the Delhi High Court held that for valuing the stock the assessing officer and the courts have to see whether the method followed was consistently followed and that there was no discussion of profit. They are the Delhi High Court considered the decision of the Madras High Court in India Motor Parts and Accessories Private Limited versus CIT (1996) 60 ITR 531 wherein the court recognised the method of valuing slow-moving and obsolescent stocks at a price below the cost which was being followed in other countries can be followed in India as well.
- iii. India Motor Parts and Accessories Private Limited versus CIT (1996) 60 ITR 531.
- iv. Leppard Versus Excess Insurance Co Ltd (1979) 1W.L.R512;



v. General Assurance Society Limited Versus Chandumull Jain and others. AIR 1966 SC 1644.

33. That apart, reference was made to the following decisions of the Honourable Supreme Court and that of this High Court and fewer the High Court's rendered in the context of Section 34 of the Arbitration and Conciliation Act, 1996:-

i. Associate Builders Vs. Delhi Development Authority (2015) 3 SCC 49;

ii. SsangYong Engineering and Construction Co Ltd Vs. National Highway Authority of India (2019) 15 SCC 131;

iii. ParaKente Collieries Limited Vs. Rajasthan Raja Vidyut Utpadan Nigam Ltd AIR 2019 SC 2908;

iv. Nathu Singh Vs. Jagdish Singh AIR 1992 Allahabad 174

v. 14 Reels Entertainment Private Limited Vs. Euro's International Media Ltd Manu/PN/4702/2020;

vi. Jagdish Singh Vs. Nathu Singh Manu/SC/0313/1992.

34. Defending the impugned order passed by the learned Single Judge, the learned Senior Counsel for the respondent submitted that the Arbitral Tribunal has come to a fair conclusion while awarding the aforesaid claim to the respondent.

35. It is further submitted that the award passed by the learned Arbitrators cannot be said to have been vitiated on account of patent illegality as the expression patent illegality which has now been drafted into the provisions of the Act with effect from 23.10.2015 in Sub-Section (2-A) to Section 34 does not entail the appellant to persuade the Courts to re-appreciate the evidence.

36. It is further submitted that the Hon'ble Supreme Court in SsangYong Engineering and Construction Co Ltd Vs. National Highway Authority of India, (2019) 15 SCC 131 has clearly held that scope of interference under the aforesaid provision of the Act on the ground of patent illegality was limited only to the situations where there is patent illegality on the face of the award impugned before it.

37. It is submitted that unless such patent illegality goes to the root of the matter, an award cannot be set aside. It is submitted that an award cannot be set aside on account of either erroneous application of law or re-appreciation of the evidence and in this case, the attempt of the respondent



was to pursued the Court to re-appreciate the evidence.

38. It is further submitted that the scheme of the Act also does not entail an aggrieved person to have the award set aside by asking the Courts to re-appreciate the evidence like a Court of Appeal. Since the scope of intervention under Section 34 (2-A) of the Act is limited, the award cannot set aside based on the submissions made before this Court.

39. It is further submitted that what was stated in paragraph 31 and 32 of Associate Builders Case referred to supra though not available for challenge on the ground of "public policy of India", could be challenged only on the ground of patent illegality only where the finding is based on

- i. no evidence at all; or
- ii. an award ignores vital evidence while in arriving at its decision on facts; or
- iii. where finding is based on documents/evidence taken behind the back of the parties by the Arbitrator.

40. He submits that none of the above circumstances are apparent on the face of the record of the award impugned before the learned Single Judge under section 34 of the Arbitration and Conciliation Act, 1996.

41. The learned Senior Counsel further submitted that the learned Single Judge has passed a well considered order while dismissing the application under Section 34 of Arbitration and Conciliation Act, 1996 and therefore prays for dismissal of this appeal.

42. We have considered the arguments advanced by the learned counsel for the appellant and the learned Senior Counsel for the respondent. We have also perused the award passed by the learned Arbitrators and the impugned order passed by the learned Single Judge of this Court.

43. At the outset, it must be also noted that under Section 34 (1) of the Arbitration and Conciliation Act, 1996, an aggrieved person can file an application for setting aside an award only in accordance with Sub-Section (2) and Sub-Section (3) of the Act.

44. However, a Court can set aside an award on the ground that award passed by the Arbitral Tribunal was vitiated on account of "patent illegality" under Section 34(-A) of the Act.

45. The respondent had originally made a claim for a sum of Rs.10,50,13,736/-. The Surveyor appointed by the appellant recommended payment of Rs.1,97,28,569/- after disallowing the



amounts under four heads as detailed in Table III of this Judgment.

46. Before the Arbitral Tribunal, gross claim of the respondent stood reduced to Rs.7,00,72,943/- from Rs.10,50,13,786/- that was originally claimed and canvassed by the respondent. The appellant however had paid only a sum of Rs.1,86,83,228/- to the respondent as against the original claim for a sum of Rs.10,50,13,786/-.

47. The appellant had thus rejected a substantial part of the claim of the respondent for a sum of Rs.8,63,30,508.00 [10,50,13,736 - 1,86,83,228] from the original claim amount of Rs.10,50,13,736/- before the initiation of the arbitral proceeding.

48. After accepting a sum of Rs.1,86,83,228/- under protest, the respondent thus field a revised claim for the aforesaid sum of Rs.7,00,72,943/- inclusive of Rs.1,86,83,228/- paid by the appellant to the respondent.

49. From the aforesaid gross amount of Rs.7,00,72,943/-, the respondent also agreed for 5% reduction towards Policy excess.

50. The Arbitral Tribunal reduced another sum of Rs.70,07,294/- at the rate of 10% from aforesaid gross amount of Rs.7,00,72,943/- towards salvage to award a gross amount of Rs.5,95,62,002/- to the respondent.

51. After deducting an amount of Rs.1,86,79,436/- already paid to the respondent prior to the initiation of the arbitral proceeding, the Arbitral Tribunal directed the appellant to pay to the respondent a net amount of Rs.4,08,82,566/-.

52. The breakup of the amounts as per the original claim, revised claim and the impugned award are detailed below:-

Heads	Calculation as per the Surveyor.	Amount sought to be denied by the Appellant	Minority View of Partly Agreeing with the respondent	Majority View Agreeing with the respondent
Original Claim Amount of the Respondent.	10,50,13,736.00	-	-	-



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Heads	Calculation as per the Surveyor.	Amount sought to be denied by the Appellant	Minority View of Partly Agreeing with the respondent	Majority View Agreeing with the respondent
Revised Claim Amount of the respondent	-	-	7,00,72,943.00	# 7,00,72,943.00
Exclusion of the value towards Dead Stock by the Respondent.	* 2,43,00,526.00	* 2,43,00,526.00	-	** 2,25,52,222.00
	8,07,13,210.00	-	-	-
Gross Assessed Loss	4,57,72,417.00	-	6,44,52,189.00	-
Depreciation	* 1,33,03,708.00	* 1,33,03,708.00	1,69,07,955.00	** 1,33,03,708.00
Market Value	3,24,68,709.00	-	-	-
Value after Depreciation	-	-	4,75,44,234.00	-
Salvage	71,43,115.98	* 84,85,104.00	47,54,423.00	# 70,07,294.00
Net-Adjusted/Assessed Loss	2,53,25,593.00	-	4,27,89,811.00	-
Value at Risk at Ambattur Location	-	-	12,62,87,890.00	-
Adjusted Loss	2,07,66,986.00	-	-	-
Less 5% Excess	10,38,349.91	-	-	# 35,03,647.00



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Heads	Calculation as per the Surveyor.	Amount sought to be denied by the Appellant	Minority View of Partly Agreeing with the respondent	Majority View Agreeing with the respondent
Available Sum Insured (Stmt-1)	-	-	12,64,66,696.00	-
Ratio of Sum Insured to VAR	-	-	1.00	-
Under Insurance in % (Stmt-2)	-	-	0.00	-
Under-insurance Amount at 18%	43,17,048.00	43,17,048.00*	Nil	43,17,048.00*
Adjusted Loss	1,97,28,636.96	-	4,27,89,811.00	-
Policy Excess		-	21,39,491.00	-
Sub Total	5,04,06,386	-	4,06,50,320.00	4,08,82,566.00
Less Amount Paid by the Appellant	1,86,83,227.00	-	1,86,83,227.00	1,86,83,227.00#
Total	6,77,47,624.00	5,04,06,386.00	2,19,67,093.00	4,08,82,566.00

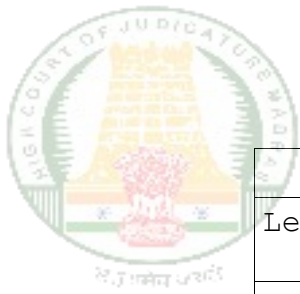
* Disallowance

** Disallowance Disallowed by the Arbitral Tribunal.

Amounts considered by the Arbitral Tribunal for allowing the claim.

53. The breakup of the amount awarded by the Arbitral Tribunal as in Paragraph No.110 of the award is as under:-

Particulars	Amount
Amount claimed by the respondent	Rs.7,00,72,943/-
Less : Policy Excess at 5% (7,00,72,943 x 5/100)	Rs. 35,03,647/-



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Particulars	Amount
Less : Salvage at 10% (7,00,72,943 x 10/100)	Rs. 70,07,294/-
Sub Total	Rs.5,95,62,002/-
Less : Already paid by the appellant	Rs.1,86,79,436/-
Total	Rs.4,08,82,566/-

54. The disallowance on four counts has been discussed at length in the majority view of the Arbitral Tribunal. It has over-ruled the objections of the appellant on three aspects namely, "depreciation", "dead stock", and "under insurance" while allowing the claim of the respondent.

55. The Arbitral Tribunal by its majority view has ultimately awarded a gross amount of Rs.5,95,62,002/- to the respondent while answering Issue No.2, 6, and 10 as against the revised net claim for a sum of Rs.6,65,69,296/- [4,78,89,860 + 1,86,79,436] of the respondent.

56. While awarding the aforesaid amount to the respondent, the Tribunal has deducted about 15% from the revised gross claim of the respondent for a sum of Rs.7,00,72,943/- towards 5% Policy Excess and 10% towards salvage.

57. On the other hand, as per the minority view of the Tribunal, the appellant was required to pay only a sum of Rs.2,19,67,093/- to the respondent.

58. After having explained the manner in which the net and the gross amount of compensation was arrived, we shall now deal with the objections of the appellant.

59. UNDER INSURANCE:- As per the stock statement furnished by the respondent with the appellant, the aggregate value of the stock at the Ambattur godown was pegged at Rs.17,11,99,118/- and the cumulative value of the stock in all the 17 godowns was Rs.23 Crores.

60. It was the case of the appellant that there was an "under insurance" by 18% by the respondent when compared to the total value of the stocks of Rs.23 Crores in all the 17 godowns.

61. In this connection, reference was made to Clause 10 of the General Condition to the Policy which reads as under:

"If the property hereby insured shall at the breaking out of any fire or at the commencement of any destruction of or damage to the property by any other peril hereby



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insured against be collectively greater value than the sum insured thereon, then the Insured shall be considered as being his own insurer for the difference and shall bear a rateable proportion of loss accordingly."

62. According to the appellant, though the value of claim was restricted to Rs.10,50,15,946/-, in the Surveyor's Assessment, it was correctly assessed the total value of loss as Rs.4,57,72,417/- less the amounts deducted on account of four counts.

63. As per the minority view of the Arbitral Tribunal, the cumulative proportionate value of the risk insured at the Ambattur godown on the date of the loss and destruction was Rs.12.65 Crores, i.e. Rs.10 Crores under Policy No. 448 and Rs.2.65 Crores under the Floater Policy No. 447, whereas, the total value of the risk considered by the Surveyor at the Ambattur godown was Rs.17.11 Crores without depreciation and therefore, to be fair, a reduction at the rate of 10% was to be applied.

64. It was opined that the value at risk worked out after application of the "weighted average" de-escalation factor was only Rs. 12.63 Crores, whereas, the sum insured to the respondent was Rs.12.65 Crores and hence invocation of average clause did not arise.

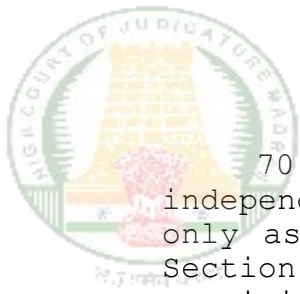
65. On the other hand, the Arbitral Tribunal in its majority view, answered the issue in favour of the respondent by taking a slightly different view. That view takes note of the fact that under both the policies, a sum assured was Rs.19 Crores [9+10 Crores].

66. It opined that the total value of the loss at the Ambattur godown was estimated as Rs.17.10 Crores by the respondent. Therefore, it cannot be said that there was "under insurance" to deny a sum of Rs.43,17,049/- to the respondent.

67. Thus, two different views emerged in the award of Arbitrators. Both the minority and the majority views are one of the many possible views, based on a reasonable interpretation of the Clauses in the insurance policies.

68. The learned Single Judge has concluded that the learned Arbitrators have given reasonable interpretation to Clause 10 of the General Conditions of the Floater Policy as also to the floater Clause.

69. In MMTCL Ltd. Vs. Vedanta Ltd., (2019) 4 SCC 163, the Hon'ble Supreme Court held that interference under Section 37 of the Act cannot travel beyond the restrictions laid down under Section 34 of the Act.



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70. In other words, the court cannot undertake an independent assessment of the merits of the award and must only ascertain that the exercise of power by the court under Section 34 of the Act has not exceeded the scope of the provision.

71. In *McDermott International Inc. Vs. Burn Standard Co. Ltd.*, (2006) 11 SCC 181, this Court held as under:-

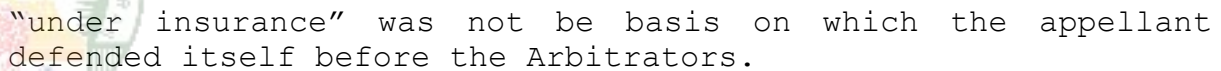
"112. It is trite that the terms of the contract can be express or implied. The conduct of the parties would also be a relevant factor in the matter of construction of a contract. The construction of the contract agreement is within the jurisdiction of the arbitrators having regard to the wide nature, scope and ambit of the arbitration agreement and they cannot be said to have misdirected themselves in passing the award by taking into consideration the conduct of the parties. It is also trite that correspondences exchanged by the parties are required to be taken into consideration for the purpose of construction of a contract. Interpretation of a contract is a matter for the arbitrator to determine, even if it gives rise to determination of a question of law. [See *Pure Helium India (P) Ltd. v. Oil and Natural Gas Commission* [(2003) 8 SCC 593 : 2003 Supp (4) SCR 561] and *D.D. Sharma v. Union of India* [(2004) 5 SCC 325] .]

113. Once, thus, it is held that the arbitrator had the jurisdiction, no further question shall be raised and the court will not exercise its jurisdiction unless it is found that there exists any bar on the face of the award."

72. Since, interpretation placed by the Arbitral Tribunal as far as "under insurance" is concerned is one of the possible views. Therefore, it does not call for interference that the award passed by the Arbitral Tribunal was vitiated on account of patent illegality.

73. In fact, this also could not have been a ground to challenge the award on the ground of "conflict with public policy" albeit either for (i) contravention of fundamental policy of Indian law or (ii) conflict with the most basic notion of morality or justice.

74. Further, the arguments advanced before us by the learned counsel for the appellant to persuade us to set aside the award passed by the Arbitral Tribunal on the ground of



75. Therefore, on this count also, it cannot be said that the award passed by the Arbitral Tribunal was vitiated on account of "patent illegality" on the issue relates to "under insurance".

76. The learned Single Judge has also concluded that the policy was drafted by the appellant themselves and if there was any ambiguity in the same, it should be resolved in favour of the insured by applying the principle of "Contra Preferendum" as held by the Supreme Court in Industrial Promotion and Investment Corporation of Odisha Ltd. Vs. New India Assurance Co. Ltd., (2016) 16 SCC 315.

77. Therefore, it cannot be said that there was any "patent illegality" on the face of the record of the award for the court to set aside the award on the issue relating to "under insurance".

78. In our view, the challenge to the award based on the submission regarding "under insurance" does not pass the test laid down by the Hon'ble Court in Ssongyong Engineering and Construction Co. Ltd. case referred to supra.

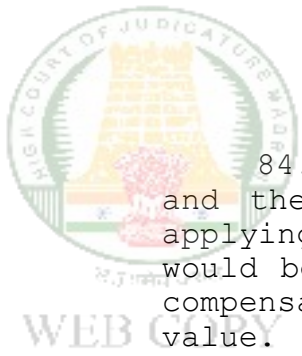
79. We therefore find no reasons to differ from the views expressed by the learned Single Judge in the impugned order in so far as the conclusion regarding "under insurance" is concerned.

80. DEPRECIATION:- The appellant had proposed reduction of Rs.1,33,03,708/- from the value of the stock for giving compensation to the respondent on account of "depreciation" based on the Surveyor's report.

81. The submission that the contract of insurance was a contract of indemnity and it allows the assured to only recover the loss and not the profit based on the decision of the Delhi High Court in Harsolia Motors Vs. National insurance Co Ltd., referred to supra is correct.

82. As an insurer, the appellant was required to indemnify the respondent only for the loss suffered by the respondent on account of the devastating flood in December 2015 under the respective insurance policies. The respondent was to be compensated on the value of the goods on the date of the loss.

83. The majority view however while answering Issue No.8 regarding the "depreciation" has held that "in respect of stock in trade, the value of acquisition is a value which has to be indemnified and therefore they do not attract depreciation". As per the majority view of the Arbitral Tribunal, there is no question of applying "depreciation".



84. While agreeing with the view of the Arbitral Tribunal and the learned Single Judge that there is no question of applying "depreciation", we are constrained to hold that it would be incorrect to conclude that an assured is entitled to compensation based on the purchase value or the acquisition value.

85. The above observations of the Arbitral Tribunal is contrary to Clause 6(i)(a) of the General Conditions of the Insurance Policy which reads as under:-

6) (i) On the happening of any loss or damage the Insured shall forthwith give notice thereof to the Company and shall within 15 days after the loss or damage, or such further time as the Company may in writing allow in that behalf, deliver to the Company:

a) A claim in writing for the loss or damage containing as particular an account as may be reasonably practicable of all the several articles or items or property damaged or destroyed, and of the amount of the loss or damage thereto respectively, having regard to their value at the time of the loss or damage not including profit of any kind.

b) Particulars of all other insurances, if any.

c) The Insured shall also at all times at his own expense produce, procure and give to the Company all such further particulars, plans, specification books, vouchers, invoices, duplicates or copies thereof, documents, investigation reports (internal/external), proofs and information with respect to the claim and the origin and cause of the loss and the circumstances under which the loss or damage occurred, and any matter touching the liability or the amount of the liability of the Company as may be reasonably required by or on behalf of the Company together with a declaration on oath or in other legal form of the truth of the claim and of any matters connected therewith.

No claim under this policy shall be payable unless the terms of this condition have been complied with.

(ii) In no case whatsoever shall the Company be liable for any loss or damage after the expiry of



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12 months from the happening of the loss or damage unless the claim is the subject of pending action or arbitration; it being expressly agreed and declared that if the Company shall disclaim liability for any claim hereunder and such claim shall not within 12 calendar months from the date of the disclaimer have been made the subject matter of a suit in a court of law then the claim shall for all purposes be deemed to have been abandoned and shall not thereafter be recoverable hereunder.

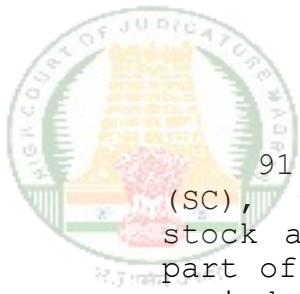
86. Therefore, the observation of the learned Single Judge upholding the majority view of the Arbitral Tribunal that depreciation has been disallowed based on a correct understanding of the accounting principles as depreciation is not applicable to stock in trade or inventory and applies only to capital assets does not reflect the correct position of law.

87. It does not reflect the correct position of law. It also ignores the expression terms of the insurance contract. In our view, the reasons given for rejection of disallowance for a sum of Rs.1,33,03,708/- under "depreciation" by the Arbitral Tribunal is contrary to well settled position of law as far as the valuation is concerned. It is to be noted that the expression "depreciation" was not used in the same sense as it is understood in the taxing statute.

88. The literature on the assessment of loss insurance by reputed authors also indicate that an assured is entitled to be compensated on the value of loss on the date of the destruction or loss and not on the purchase value or the value of acquisition.

89. In fact, for the purpose of determination of profit and loss, Accounting Standards has been issued by the Institute of Chartered Account. As a matter of fact, Accounting Standard - 2 [AS-2] exist for valuation of inventories.

90. The meaning of the expression "inventories" was considered by the Hon'ble Supreme Court in Liberty India Vs. Commissioner of Income Tax, (2009) 9 SCC 328. In paragraph 40, the Court held that "Inventories are assets held for sale in the course of business; in the production for such sale or in the form of materials or supplies to be consumed in the production. "Inventory" should be valued at the lower of cost and net realisable value (NRV). The cost of "inventory" should comprise all costs of purchase, costs of conversion and other costs including costs incurred in bringing the "inventory" to their present location and condition."



91. In Chainrup Sampatram Vs. CIT, (1953) 24 ITR 481 (SC), the Hon'ble Supreme Court held that valuation of unsold stock at the close of the accounting period was a necessary part of the process of determining the trading results of that period. It cannot be regarded as a source of profits. It held that the closing stock is to be valued at cost or market price, whichever is the lower.

92. It further observed that "Profits can be correctly ascertained only after bringing into the trading account the closing stock, wherever it may exist. It was further held that "the true purpose of crediting the value of unsold stock is to balance the cost of the goods entered on the other side of the account at the time of their purchase, so that on cancelling out of the entries relating to the same stock from both sides of the account would leave only the transactions in which actual sales in the course of the year have taken place and thereby showing the profit or loss actually realised on the years trading. The entry for stock which appears in a trading account is merely intended to cancel the charge for the goods purchased which have not been sold which should necessarily represent the cost of the goods. If it is more or less than the cost, then the effect is to state the profit on the goods actually sold."

93. The Court further held that "From this doctrine there is one exception, namely, the adoption of market value at the date of making up of accounts, if that value is less than the cost. This is in anticipation of the loss that may be made on the goods in the following year. While anticipated loss is taken into account, anticipated profit in the shape of appreciated value of the closing stock is not brought into the account as no prudent trader would care to show increased profits before actual realisation. This theory that the closing stock is to be valued at cost or market price, whichever is the lower, is now generally accepted as an established rule of commercial practice and accountancy." (emphasis added)

94. In Sanjeev Woollen Mills Vs. CIT, (2005) 13 SCC 307, the Hon'ble Supreme Court held that an assessee may employ whichever basis of valuation of stock in hand, but he must adhere to that consistently, year after year. Casual departure of valuation of trading stock in hand at cost or market value is not permissible. The method adopted of maintaining the accounts should be the definite method of valuation which is carried on by the assessee from year to year.

95. Though the above decision was rendered in the context of Section 145 of the Income Tax Act, 1961, it does serve as a useful guide for the present discussion. The Court further held that what is material for the purpose of Section 145 is to be determined the profit and gain therefrom. If the method adopted does not afford a true picture of profit, it would be



rejected, but then such rejection should be based on cogent evidence and would be done with caution.

96. The term 'Stock-in-trade' refers to the merchandise (articles and commodities) which is held for sale in retail shops or in wholesale establishment, factories and also merchandise intended for sale and held in warehouses and godowns. Stock -in-trade in the hands of retailer or wholesaler can ordinarily be replaced, if lost or destroyed. The retailer can buy from the wholesaler and the wholesaler from the manufacturer.

97. Normally, the basis of settlement would be the cost of replacement and not the price at which they would be sold. Even as per the authoritative texts, it is the market value at the time and place of the loss which has to be indemnified.

98. In page 520 of Macgillivray On Insurance Law, 2008, 11th Edition, SWEET & MAXWELL it has been stated as follows:-

'If there is a total loss, the amount payable to the assured will be the value of the thing insured at the time of the loss, but if there has only been a partial loss, the correct measure of indemnity is the difference between the value of the damaged property before and after the loss.

99. In para 11, page 62 of Fire Insurance Claims Law And Practice of The Chartered Insurance Institute edited by PITMAN it has been opined that,

"where stock-in-trade is destroyed, payment on the basis of market value at the time and place of the loss normally gives an indemnity. Market value here is the cost to replace goods lost and so excludes any element of profit. This is so with the merchant, whether he be a wholesaler or retailer. If the former, he replaces his stock by buying it from the manufacturer, and having restocked his warehouse he can again sell to the retailer and so make his profit. Similarly, the retailer can replace by buying from the wholesaler and then sell again to the public. The insurer must be given the benefit of any trade discounts and other concessions enjoyed by the insured in the course of his business. Little difficulty arises from such losses,



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and the only time complications may arise is when, at the time of the loss, there is no available market. No hard and fast rule can be laid down to meet such circumstances. The stock may be obsolete or obsolescent and have little or no value. But, while seemingly obsolete, it may have potential future value. Moreover, it may be possible to replace it by purchase at the premises of a manufacturer who still has some of the stock available, when cost plus transport probably constitutes an indemnity. In all these circumstance value is dependent on fact, which must take into consideration all the relevant circumstance.

100. In CWT Vs. Mrs. Sara Vargheese, (1991) 187 ITR 450 (Ker) Paripoorman, J as he was then observed as under:

"Regarding valuation, what we are concerned is the market value of the property. It is the price which a willing buyer will pay to a willing seller. It will vary from case to case. Valuation is not an exact science. Mathematical calculation is not possible. Money value attributable to the asset should be decided and estimated by the concerned statutory authority in a reasonable and judicial manner on the basis of the facts and circumstances available before him. Valuation should be made objectively and should be based on some material. Even in cases where the asset to be valued has no real market, it is for the assessing authority to fix a notional market value. A hypothetical market is contemplated. 'Imponderables' are involved in the matter of valuation. Some of the principles to be borne in mind in that direction have been stated in the Bench decision of this court in CIT v P.I.George (1988) 69 CTR 174 (Ker); (1988) 171 ITR 620 (Ker). Decisions are legion dealing various aspects regarding valuation. The qualitative and quantitative analysis in the matter of valuation will differ from asset to asset, place to place, and also considering the particular statute for which the valuation and price of the property has to be determined. It cannot be a wooden rule. Different methods and approaches necessary in the context of different statutes, under which the market value of an asset



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has got to be determined, pose difficult problems. The market value has got to be fixed with reference to the particular statute. The approach will differ, according to the nature of the statute, fiscal statutes and non-fiscal statutes. Land Acquisition Act is an important legislation. Among the fiscal statutes, IT Act, WT Act, GT Act, Municipalities Act, etc., are important. In fixing the market value of a particular asset or property, the approach and the analysis is likely to vary according to the subject matter of legislation. The principles that are ordinarily applied in the case of non-fiscal statutes like Land Acquisition Act cannot be applied mechanically in the cases arising under fiscal statutes."

101. Thus, it is the cost of purchase or the market price whichever is lower which is relevant for determining the correct value and for awarding compensation. This also would be in harmony with Clause 6 of General Terms of the Contract as extracted supra and in the view of the authoritative texts on the law of insurance quoted by the learned counsel for the appellant and few text, we have noted referred to above.

102. A reading of the Award passed by the Arbitral Tribunal also makes it clear that it has not considered any accounting standard to determine the value while passing the award.

103. In our view, the majority view of the Arbitral Tribunal that the value of acquisition has to be applied for indemnifying the respondent stems from an incorrect application of substantive law on the valuation under the insurance law and accounting principles and standards. The value determined by the Arbitral Tribunal therefore requires re-consideration.

104. Therefore, the observation of the learned Single Judge that "rejection of the 5% per year depreciation by the Arbitral Tribunal was based on a correct understanding of the accounting principle that the concept of depreciation is not applicable to stock-in-trade or inventory and only applies to capital assets" does not reflect the correct position of law to the facts of the case. Conceptually, they are different.

105. The above observation of the learned Single Judge, in our view, cannot be upheld. There exist Accounting Standards for valuation of inventories viz. Accounting Standard - 2 [AS-2] issued by the Institute of Chartered Accountants of India. There are authoritative texts on insurance which have been referred to supra which have categorically



stated that it is the value on the date of the loss.

106. DEAD STOCK:- The proposition that the submission of the respondent on "dead stock" was based on Exhibit-C8 and therefore was nothing but an attempt to invite the Court to re-appreciate the evidence appears to be correct. Re-appreciation of evidence is expressly prohibited under Section 34(2-A) of the Arbitration and Conciliation Act, 1996.

107. However, the value of such goods which were classified as "dead stock" is to be valued as on the date of its loss and not based on the value on the date of its purchase or acquisition as was done by the Arbitral Tribunal.

108. The purchase value as on the date of its acquisition cannot reflect the correct value for the purpose of determining compensation under the insurance policy.

109. In fact, the Tribunal had also tweaked the value of dead stock as Rs.2,22,52,222.20 from Rs.2,43,00,526/-. However, there is no discussion on the same in the award.

110. If depreciation or diminution in the value is to be allowed on the stock that was considered for awarding compensation, we find no reason as to why the same yardstick should not be applied on the value of goods which was considered as "dead stock".

111. The Arbitral Tribunal has not determined the correct value of the stock on the date of the loss for awarding the compensation to the respondent. In our view, the Arbitral Tribunal has also not considered the express terms of the insurance contract while awarding compensation to the respondent. Therefore, the observation of the Arbitral Tribunal on "dead stock" in award impugned is liable to be set aside. There is thus "patent illegality" in the award on the face of the record.

112. SALVAGE:- While awarding a balance sum of Rs.4,08,82,566.00/- to the respondent, the Arbitral Tribunal has reduced a sum of Rs.70,07,294/- [4,78,89,860 - 4,08,82,566.00] towards 'Salvage'. This appears to be the trade practice. Therefore, we do not find any error in the award while reducing the compensation on account of the salvage value on the first blush.

113. At the same time, since the value of the stock is to be re-determined based on its value on the date of loss, the amount to be deducted on account of "salvage" will also proportionately change.

114. Therefore, we set aside the impugned order upholding the award impugned in so far as it upholds disallowance of amount on account of dead stock and depreciation.



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115. Though concept of depreciation is not applicable of trading stock or the inventories, the Arbitral Tribunal is expected to determine the value of the stock lost as on the date of the loss /destruction taking note of the above discussion in this Judgment.

116. Since the value has to be re-determined afresh, the appellant and the respondent may declare the correct value of the stock as on the date of the loss in terms of Accounting Standard -2 (AS-2) issued by the Institute of Chartered Accountants of India which is accepted by the Income Tax Department for computation of Profit and Loss for payment of income tax and/or determine the value keeping the views expressed in the authoritative texts on the insurance law.

117. The Arbitral Tribunal is expected to determine the value keeping in mind the trade practice, the terms of the contract.

118. In the result, the impugned order dated 04.12.2019 passed by the learned Single Judge in O.P.No.823 of 2016 upholding the award dated 09.03.2019 of the Arbitral Tribunal in so far the issue Nos.7 & 8 are concerned is set aside.

119. The respondent is at liberty to re-initiate proceedings in accordance with law as per the decision of the Hon'ble Supreme Court in McDermott International Inc. Vs. Burn Standard Co. Ltd., (2006) 11 SCC 181, within a period of one months from the date of receipt of a copy of this Judgment

120. The Arbitral Tribunal is expected to arrive at the correct value of the stock on the date of the loss either by applying Accounting Standard - 2 [AS-2] or any other treaties for valuation under insurance law in terms of authoritative text. On such value, there shall be further reduction towards salvage value. The Arbitral Tribunal shall dispose the arbitral proceedings within a period of 11 months thereof.

121. This Original Side Appeal filed by the appellant under Section 37 of the Arbitration and Conciliation Act, 1996 is partly allowed with the above observations. No cost. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS I)

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Sub Assistant Registrar



To. The Arbitral Tribunal at Chennai,
Chennai.

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1. The Section Officer,
V.R.Section,
High Court, Madras.
2. The Sub Assistant Registrar
Original Side,
High Court,
Madras - 104

+1CC to Mr.R.Ashwanth, Advocate, Sr.No.4295/2021

Pre-Delivery Judgment
in
O.S.A.No.89 of 2020 and
C.M.P.No.3670 of 2020

SV (CO)
K.RK. (04.08.2021)