

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

TUESDAY, THE 14TH DAY OF SEPTEMBER 2021

THE HON'BLE MR. JUSTICE N. SATHISH KUMAR

O.P.No. 157 of 2018

In the matter of Arbitration and
Conciliation Act, 1996

And

In the matter of impugned award dated
April 4, 2017, as corrected and/or
modified by the order dated June 3,
2017.

And

In the matter of dispute between AI
Champdany Industries Ltd and The
New India Assurance Co Ltd

AI Champdany Industries Limited,
Rep by its Managing Director Nirmal Pujara,
Having its Registered Office at :
No.25, Princep Street, Kolkata – 700 072,
West Bengal.

... Petitioner

-Vs-

The New India Assurance Company Limited,
Having its registered Office at :
770A, Anna Salai, Dewa Towers,
Chennai – 600 002.

also at:
McMillan House, II Floor, B Block,
21, Pattulos Road, Chennai – 600 002.
Tamil Nadu.

... Respondent

Original Petition praying that this Hon'ble Court be pleased to set-aside (a) the impugned Arbitral Award dated April 4, 2017, as modified by the order dated June 3, 2017 passed by the said Learned Arbitral Tribunal, to the extent of acceptance of the Surveyors Report on determination of the value of the stocks by application of the Daily Price Bulletin of the Gunny Traders Association and direct the Respondent to pay the loss of stocks differential value at Rs.1,28,02,535/- with interest (b) Costs of and/or incidental to this petition be borne by the Respondent.

This Original Petition connected along with O.P.No. 735 of 2017 having been heard on 07/09/2021 in the presence of Mr. AR. Ramanathan, For Mr.S.Karunamoorthy, advocates for the petitioner herein and Mr.S.R.Sundar, Advocate for the respondent herein and upon reading the petition and the award dated 04/04/2017 filed herein and having stood over for consideration till this date and coming on this day before this Court for orders in the presence of the said advocates for the parties hereto and this Court having observed that the Arbitrators have found that the claimant has not provided unit-wise picture of profit and loss or any other materials and therefore, it cannot be said that the learned Arbitrators have ignored this vital document and in fact the learned Arbitrators have considered this

aspect factually and passed award, therefore, learned counsel's contention that the award is suffered by Patent Illegality cannot be countenanced and this Court does not find any materials to find that the award awarding a sum of Rs.1,20,75,418.84 is suffered from any patent illegality and

it is ordered as follows :-

That the Petition in O.P.No. 157 of 2018 be and is hereby dismissed.

WITNESS THE HON'BLE MR. JUSTICE SANJIB BANERJEE,
CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE
14TH DAY OF SEPTEMBER 2021.

Sd/-

ASSISTANT REGISTRAR (OS – II)

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

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ED
04.04.2022

O.P.No. 157 of 2018

ORDER

DATED: 14.09.2021

THE HON'BLE MR. JUSTICE
N. SATHISH KUMAR

FOR APPROVAL : 06.04.2022

APPROVED ON : 06.04.2022

THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Delivered on
07~09~2021	14-09~2021

CORAM:
THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

O.P. Nos.735 of 2017 and 157 of 2018

O.P.No.735 of 2017

The New India Assurance Co. Ltd.,
MCMillan House II Floor
B Block 21 Pattulos Road,
Chennai 600002.

.. Petitioner

-Vs-

1.M/s.A1 Champdany Industries Ltd.,
Existing company within the meaning of
Companies Act having its office at
25, Princes Street, Kolkota 700 072.

2.Mr.Justice Alope Chakrabarti (Retd.)
Presiding Arbitrator,
Uniworld City, Horizons,
Tower-4, Flat No.203,
Action Area-III,
New Town, Rajarhat, Kolkotta 700156.

3.Mr.Abhijit Chatterjee,
Senior Advocate.Co-Arbitrator,
No.50, Pollygunge Garden,
Kolkota 700017.

4.Mr.N.Veeraraghavan,
Co-Arbitrator,
No.3, First Street,
North Gopalapuram
Chennai 600086.

.. Respondents

O.P.No.157 of 2018

M/s.A1 Champdany Industries Ltd.,
 Rep.by its Managing Director Nirmal Pujara,
 having its registered office at:
 25, Princes Street, Kolkota 700 072
 West Bengal.

... Petitioner

-Vs-

The New India Assurance Co. Ltd.,
 having its Regional office at:
 770A, Anna Salai, Dewa Towers,
 Chennai 600002.

Also at:

MCMillan House II Floor, B Block,
 21 Pattulos Road, Chennai 600002.
 Tamil Nadu.

... Respondent

Prayer in O.P.No.735 of 2017: Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996, to set aside the Award dated 04.04.2017 and order dated 03.06.2017 passed by the Arbitral Tribunal insofar as the interest is concerned being levied in the claim interim awarded sum of Rs.2,24,96,736 and the principal amount of Rs.1,20,75,418.84 awarded in the final award the date of interest being 19.08.2011 as well as the rate of interest including non consideration of the 5% policy excess and non consideration of reinstatement premium for the policy and other aspects as pointed out in Section 33 application.

Prayer in O.P.No.157 of 2018: Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996, to set aside the impugned Arbitral Award dated 04.04.2017, as modified by the order dated 03.06.2017 passed by the Arbitral Tribunal, to the extent of acceptance of the Surveyors Report on determination of the value of the stocks byt application of the Daily Price

Bulletin of the Gunny Trades Association and direct the Respondent to pay the loss of stocks differential value and costs.

For Petitioner : Mr. S.R. Sundar,
in O.P.735/2017
and Respondent
in O.P.157/2018

For 1st Respondent : Mr.AR. Ramanathan for
in O.P.735/2017 Mr.S.Karunamoorthy
and Petitioner
in O.P.157/2018

COMMON ORDER

1.Two Original Petitions are filed Challenging the Arbitral Award passed by the learned three member Arbitral Tribunal dated 04.04.2017 and the modified order dated 03.06.2017.

1.a. O.P.No.735 of 2017 has been filed by the Insurer only with regard to the interest awarded by the learned Arbitrators.

1.c. O.P.No.157 of 2018 has been filed challenging the Award on the ground that the learned Arbitrators have ignored the vital evidence in respect of valuation arrived by the Surveyor. Hence, the Award fixing the compensation is suffered from patent illegality.

1.d. The parties are arrayed as per their own rankings before the Arbitral Tribunal. The Petitioner who filed O.P.No.157 of 2018 is referred as Claimant herein and the Petitioner who filed O.P.No.735 of 2017 is referred as Respondent for convenience sake.

1.e. Since both the Petitions are arising out of the same award they are disposed by way of this Common Order.

2. The brief facts leading to file these Original Petitions are as follows:

The Claim has been raised on the basis of the Insurance Policies No.710904/11/10/11/00000041, 710904/11/10/11/00000042 and 710904/11/ 10/11/00000043 mainly on the basis of the loss suffered due to the damage caused by fire to the building, plant and machinery and stocks on 21.01.2011. It is the case of the Claimant that as per copy of the First Final Survey Report the Surveyor has assessed loss for a sum of Rs.3,43,44,986/-. Whereas in Addendum the quantum of loss reduced to a sum of Rs.2,25,82,826/-. The Tribunal has passed an Interim Award for a sum of Rs.2,24,96,736/- on 17.06.2014. For the remaining amount the Claim has been raised.

3. The learned Three Member Arbitral Tribunal after considering various documents passed an Award as follows:

(i) Amount allowed by the Surveyor in Final survey Report (page 48 of FSR)	Rs.3,43,44,986=00
(ii) Add: Amount Disallowed by the surveyor in respect of slow moving stocks (page 34 of FSR)	Rs. 7,27,168=84

	Rs .3,50,72,154=84
(iii) Less: Deduction on account of Salvage value of stock	Rs. 5,00,000=00

	Rs. 3,45,72,154=84
(iv) Less: Amount paid in terms of interim Award dated June 17, 2004	Rs. 2,24,96,736=00

(v) Amount payable by the Respondent to Claimant	Rs. 1,20,75,418=84 =====

On the question of interest, we are of the view that ends of Justice would be served if we allow interest as follows:

i) So far as the sum of Rs. 2,24,96,736/- (interim Award amount) is concerned the interest shall be payable at the rate of 9% per annum from August 19, 2011 being the date of submission of the claim form (page 109 of Counter statement) till the said sum was actually paid by the

respondent to the claimant.

ii) So far as the sum of Rs. 1,20,75,418.84(being the difference between the total claim allowed and the interim award amount) at the rate of 9% per annum from August 19, 2011 till the date of this award.

In case the amount awarded hereby is not paid by the respondent to the claimant within two months from this award, claimant shall be entitled to get from the respondent interest at the rate of 18% per annum from the date of award till the date payment of sum hereby awarded.

On the question of cost, the parties have not produced before the tribunal particulars of expenses incurred or any supporting material therefor. Therefore, considering the material on records of the Tribunal, mainly covering claimants share of Arbitrators, remuneration we direct a sum of Rs. 60,00,000/- (sixty lakhs only) be paid by the respondent to the claimant on account of cost of arbitration.

In above view of findings an award is hereby passed directing the respondent to pay to the claimant a sum of Rs.1,20,75,418.84 (Rupees one crore twenty lakhs seventy five thousand four hundred eighteen and paise eighty four) only over and above the amount already paid in terms of

interim award. Respondent is further liable to pay interest @ 9% per annum from August 19, 2011 till the date of actual payment to claimant on Rs. 2,24,96,736/- , interest @t 9% per annum from August 19, 2011 till the date of final award on 1,20,75,418.84 and in case the respondent fails to pay the above amounts with in two months from the date of the final award further interest at the rate of 18% per annum on Rs. 3,45,72,154.84 from the date of this final award till the date of actual payment of the sum hereby awarded along with cost assessed at Rs.60,00,000/- (sixty lakhs).

4. Now, the only dispute raised by the Insurer/Respondent is the rate of interest. According to them it is against the provision of Contract. The rate of interest ought to have been either from the date of Claim Petition or from the date of Survey Report i.e., when the cause of action arose. But the Insured/Claimant contend that the Arbitrators have not considered the material documents particularly the answer given by the Surveyor under Ex.R-17 to Ex.R-20 which proved the fact that value added products have been ignored by the Surveyor and also by the Tribunal, same is nothing but patently illegal. It is the further contention that the Gunny Trader Association price relied by the Surveyor and upheld by the Tribunal has no evidence at all as the same does not provide separate price for various types and value added products and therefore the said portion of Award suffers

from patent illegality as per Section 34(2)(b) (ii) of the Act. In support of his contention learned counsel for the Claimant relied upon the judgments:

1. Ssangyong Engineering and Construction Ltd. vs. National Highways authority of India [2019 5 MLJ 7 (SC)]

2. Associated Builders vs. Delhi Development Authority [(2015) 3 SCC 49]

3. Manalal Prabhudayal vs. Oriental Insurance Company Ltd., [(2009) 17 SCC 296]

4. Ravichee & Co. vs. Union of India [2018 (4) CTC 330]

5. whereas it is the main contention of the Insurer/Respondent that even though the date of loss was on 21.01.2011, Claim Form was submitted only on 19.08.2011 after 7 months. The grant of payment of interest should be in consonance to Regulations 9 of IRDA (Protection of Policy Holders Interest) Regulations 2002, especially the Survey Report was dated 18.09.2012 and Addendum to the Survey Report is dated 25.03.2013. Hence it is his contention that the Arbitral Tribunal erred in granting payment of interest on the admitted amount of Rs.2,24,96,736/-. It is the

contention that the Insured has not received any communication accepting the amount offered by the insurer. Therefore, Awarding interest on that amount is not correct and it is his further submission that there was a delay in filing the Claim which was ignored by the Tribunal.

6. Similarly, the Tribunal also failed to consider the Condition No.15 of the policy for reinstatement of premium and policy excess of 5% in the memo filed under Section 33. Hence it is the contention that the Tribunal has failed to appreciate Regulation 9(2) of the Regulations wherein the insurer is liable to pay interest from the 30th day of the Survey Report and in the instant case the Survey Report was received on 25.09.2012 and Addendum on 25.03.2013. In this case even though the Insured has sought interest from 19.11.2011, the Tribunal has granted interest on the Principal as well as the Interim Award from 19.08.2011. The Tribunal has failed to appreciate that as per General Condition No.6(1) of the policy the insured ought to have submitted the claim form within 15 days from the date of loss. But the Claimant has submitted the Claim Form only after 7 months from the date of loss. Further the grant of interest should be from the date of cause of action as per Section 31(7) of the Arbitration and Conciliation Act when the Claimant himself claimed interest from 19.11.2011 in the Claim Petition, awarding interest from 19.08.2011 contrary to the reference.

7. In support of his contention the learned counsel for the Respondent relied upon the following judgments:

1. *Union of India vs. Bright Power Projects India Pvt. Ltd.*, [2015 (9) SCC 695]
2. *Food Corporation of India vs. New India Assurance Co. Ltd., & others* [(1994) 3 SCC 324]
3. *National Building Construction Corporation vs. Kiri Association* [2014 SCC online Delhi 6878]
4. *Eternity Footwear Ltd., vs. The Oriental Insurance Co. Ltd.*, [2018 SCC Online Del 9504]

8. In the light of the above this court proceed to deal the O.P.157 of 2018 first. The only challenge made is that the Arbitrators have not considered relevant materials particularly Ex.R-17 to Ex.R-20 and just relied upon the Survey Report based on the GTA price Bulletin to determine the valuation of stocks. The main crux of the argument of the learned counsel is that Ex.R-17 to Ex.R-20 have not been properly considered by the learned Arbitrator. It is to be noted that the learned Arbitrators have

factually recorded their finding that the Claimant failed to provide unit-wise picture of profit and loss. Therefore, the Surveyor adopting GTA rate for determining the value of the stocks cannot be faulted with. In fact, the learned Arbitrators have recorded the fact that the question as to what was the profit in the unit in question was very much a fact within the special knowledge of the Claimant by invoking the principles of Evidence Act and held that onus lies on the Claimant to prove the same. The learned Arbitrators have given reasons for accepting the Survey Report and further they have factually found that there is no other material on record to arrive at any other valuation for loss to stocks.

9. The main contention of the learned counsel for the Petitioner is that 68406 shown in column 1 of Annexure-19 only lumpsum value was adopted with huge difference. It is to be noted that Annexure-19 itself is only a quotation and the note appended to the quotation clearly indicate that this quotations are no way binding on manufacturers / dealers / traders in their individual transaction and entirely based on market trend. The Arbitrators have found that the Claimant has not provided unit-wise picture of profit and loss or any other materials. Therefore, It cannot be said that the learned Arbitrators have ignored this vital document. In fact the learned Arbitrators have considered this aspect factually and passed Award.

Therefore, learned counsel's contention that the Award is suffered by Patent Illegality cannot be countenanced. Therefore, the citation in *Ssangyong Engineering and Construction Company Ltd., vs. National Highways Authority of India (NHAI) [(2019) 15 SCC 131]* relied upon by the learned Counsel for the Petitioner cannot be applied to the facts of the present case. Accordingly this Court do not find any materials to find that the Award awarding a sum of Rs.1,20,75,418.84 is suffered from any patent illegality. In view of the above, the **Original Petition No.157 of 2018 is dismissed.**

10. As far as the challenge made to Award with regard to interest is concerned, it is the main contention of the Claimant that the question of payment of interest will payable from the date of cause of action, much reliance was placed on Section 31(7) (a) of the Arbitration act. A perusal of the Section 31(7)(a) makes it very clear that in the absence of any agreement between the parties learned Tribunal can grant reasonable interest for the whole or any part of the Award for the period from the date of cause of action arose and the date on which the award has been made. Factually it is not disputed that a fire accident took place on 21.1.2011 whereas the Claimant made the Claim only on 19.8.2011. In the Claim Petition interest has been claimed from 19.11.2011 and not from 19.8.2011. Whereas the learned Arbitral Tribunal granted interest from 19.8.2011. Much reliance

has been placed on the insurance stipulations and policy conditions. It is the contention of the learned counsel for the Insurer that the interest shall be payable only as per the regulations of IRDA. Hence it is his contention that the learned Arbitrators awarding interest from 19.11.2011 is against the terms of contract.

11. As per the above regulations the payment of interest will be as per the regulations only. Clause 9 of the Regulation reads as follows:

9. Claim procedure in respect of a general insurance policy

(1) An insured or the claimant shall give notice to the insurer of any loss arising under contract of insurance at the earliest or within such extended time as may be allowed by the insurer. On receipt of such a communication, a general insurer shall respond immediately and give clear indication to the insured on the procedures that he should follow. In cases where a surveyor has to be appointed for assessing a loss/claim, it shall be so done within 72 hours of the receipt of intimation from the insured.

(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.”

Therefore the payment of interest shall be at a rate which is 2% above the bank rate will commence only when there is a delay.

12. Clause 9 of the IRDA Regulations makes it very clear that only upon acceptance of an offer or settlement as stated in Regulation 9(5) by the insured, the payment of the amount due shall be made within 7 days from the date of acceptance of the offer made by the insured. In the cases of delay in the payment, the insurer shall be liable to pay interest at the rate which is 2% above the bank rate prevalent at the beginning of the financial year in which the Claim is reviewed by it.

13. In **Eternity Footwear Ltd., vs. The Oriental Insurance Co. Ltd., [2018 SCC Online Del 9504]** the Division Bench of Delhi High Court in para 39 relied upon the Sub-Rules (5) & (6) of Rule 9 of the IRDA Regulations and held that interest would start running only from the date of communication of consent, by the insured, to the offer made by the insurer, and would arise in the event of failure on the part of the insurer, to make payment, to the insured, within seven days of such communication. As such, no fault can be found with the Award passed by the learned Arbitral Tribunal in granting interest w.e.f. 5th May, 2010, or with the impugned judgment of the learned Single Judge, upholding the said decision.

14. Therefore, when the parties are governed by the Contract and Regulations the same cannot be ignored. Final Survey Report originally

filed by the Surveyor on September 18, 2012 and he has assessed the quantum of loss to the tune of Rs.3,43,44,986/-. Thereafter, * Addendum was issued by the Surveyor reducing the amount to Rs.2,24,96,786/- by Addendum dated 26.03.2013 under Ex.R-11. Learned Arbitrators however factually found * that the amount originally assessed by the Surveyor in his Report dated 18.09.2012 is to be paid to the insured. It is to be noted that to invoke IRDA Regulations, Insurer should have offered the settlement of the Claim to insured immediately after receipt of first survey report. Whereas Addendum was issued by Surveyor on 26.03.2013. Further there is * **no** material to show that insured has accepted the offer of settlement of Claim by Insurer. In the absence of offer and acceptance as stipulated in Regulations 9(5) and 9(6), IRDA Regulations cannot be pressed into service to contend that cause of action arose only on receipt of Survey Report. Therefore, relying upon Clause 9 of the IRDA Regulations would not arise at all. However, the very Claim itself, the Petitioner has claimed interest from 19.11.2011. In such a view of the matter, this Court is of the view that the Arbitrators awarding Interest from * **19.08.2011** is against the reference itself. Therefore, this Court is of the view that the interest Awarded by the Arbitrator should be restricted from 19.11.2011. In fine, the **Original Petition No.* 735 of 2017 is * partly allowed .**

15. In the result O.P.No.* **735** of 2017 * **is partly allowed** and
O.P.No.157 of 2018 * **stands** dismissed.

*** Modified as per order dated 23.09.2021
made in O.P.Nos. 735 of 2017 & 157 of 2018.**

**Sd/- (06/04/2022)
ASSISTANT REGISTRAR (O.S-II)**

Sd./- N.S.K.J.,
14/09/2021

//Certified to be true copy//
Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

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