

IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 18.05.2021

+ **O.M.P. (COMM.) 605/2020 & IA No. 12527/2020**

M/S ORIENTAL INSURANCE CO. LTD.

..... Petitioner

versus

M/S ACE FOOTMARK PVT. LTD.

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr Joy Basu, Senior Advocate with Mr Mohit Arura and Mr Kanak Bose, Advocates.

For the Respondent : Mr Sachin Dutta, Senior Advocate with Ms Ritika Jhurani, Ms Jipsa Rawat, Ms Nitya Bakshi and Mr Akshay Chitkara, Advocates.

CORAM

HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. Oriental Insurance Co. Ltd. (hereinafter 'OICL') has filed the present petition under Section 34 of the Arbitration and Conciliation Act, 1966 (hereinafter the 'A&C Act'), *inter alia*, impugning an Arbitral Award dated 28.08.2020 (hereafter the 'impugned award') passed by the Arbitral Tribunal constituted of Justice (Retd.) Kurian Joseph, a former judge of the Supreme Court of India as the sole

arbitrator. The impugned award was rendered in the context of disputes relating to the insurance claims made by the respondent (hereinafter 'AFPL') under the insurance policy issued by OICL.

2. AFPL is a company engaged in the business of manufacture of footwear. AFPL had a valid "Standard Fire and Special Perils Policy (bearing policy number 510000/11/2018/483 with period of insurance commencing from 00:00 on 25.10.2017 to the midnight of 24.10.2018 – hereafter the 'Policy'). In terms of the Policy, AFPL was insured against the specified risks for a sum of ₹9,70,00,000.

3. On 09.12.2017, a fire broke out in AFPL's manufacturing plant (bearing Plot No. 213, HSIIDC, Footwear Park, Sector-17, Bahadurgarh, Jhajjar, Haryana) which resulted in AFPL suffering substantial loss. On 11.12.2017, OICL appointed a surveyor (M/s Timeline Insurance Surveyors and Loss Assessors Private Limited – hereafter the 'Surveyor') to survey and assess the loss caused to the stock, building, plant and machinery due to the aforesaid incident.

4. On 10.01.2018, AFPL lodged a claim amounting to ₹10,98,28,543.70/-. The Final Survey Report was filed on 12.06.2018 and the same quantified the loss suffered by AFPL at ₹4,70,15,504.79/- excluding the Goods and Services Tax (GST) thereon. On 12.11.2018, OICL made an on-account payment of ₹2,00,00,000/-. On 13.12.2018, OICL informed AFPL that its claim had been approved for a sum of ₹4,70,15,505/-, subject to adjustment of the on-account payment made by it on 12.11.2018. It further directed AFPL to provide a discharge voucher in the given format

duly filled, stamped and counter-signed by the bank. On 15.12.2018, AFPL submitted the discharge voucher (hereinafter ‘the Discharge Voucher’) as required by OICL.

5. On 20.12.2018, OICL released the balance sum of ₹2,70,15,505/- to AFPL. On 26.12.2018, AFPL sent a protest letter stating that the Discharge Voucher was executed by it under protest and requested for a copy of the Final Survey Report. By way of a notice dated 29.01.2019, AFPL invoked the agreement to refer the disputes to arbitration as contained in the Policy. OICL responded to the said notice on 28.02.2019. It denied the averments made by AFPL but suggested the name of Mr. R.K. Kaul to be appointed as the arbitrator to adjudicate the disputes between the parties. AFPL did not agree with the proposed name and suggested that a retired High Court Judge be appointed as an Arbitrator.

6. Eventually, on 22.05.2019, OICL appointed Justice Kurian Jospeh, a former Judge of the Supreme Court of India as the Sole Arbitrator and he entered reference on 27.05.2019.

7. On 13.07.2019, AFPL filed its Statement of Claim before the Arbitral Tribunal, raising the following claims:-

Table 1

Claim No	Claim Details	Relief Claimed
Claim No 1	Claim on account of loss to Plant and Machinery	₹ 75,95,759/-
Claim No 2	Claim on account of loss to	₹2,11,99,350/-

	Building	
Claim No 3	Claim on account of loss to Stock	₹25,00,000/-
Claim No 4	Claim on account of interest as per IRDA Regulations, 2017	₹54,70,826/-
Claim No 5	Claim on account of excess deducted by the Insurance Company	₹24,74,669/-
Claim No 6	Claim on account of loss to Fire Fighting Equipment	₹7,96,500/-
Claim No 7	Claim on account of Removal of Debris	₹4,00,371/-
	TOTAL	₹4,04,37,475/-

8. In addition to the total claim of ₹4,04,37,475/-, AFPL also claimed interest thereon. On 30.08.2019, OICL filed its Statement of Defence along with an application under Section 16 of the A&C Act, contending that AFPL's claims were not arbitrable. OICL also contended that the claims were liable to be rejected on the ground that the contract stood discharged by accord and satisfaction as AFPL had signed the Discharge Voucher in full and final settlement of all its claims. By way of a procedural order, the Arbitral Tribunal noted that the controversy raised in the application under Section 16 of the A&C Act involved disputed questions of fact that required consideration of

evidence and decided to frame an issue to be considered along with the reliefs claimed in the Statement of Claims.

9. The dispute whether the contract of insurance stood discharged by accord and satisfaction was considered as issue no.1. The Arbitral Tribunal decided the same against the petitioner. It reasoned that AFPL was compelled to execute the Discharge Voucher for release of admitted payments. The Arbitral Tribunal found that AFPL was under compulsion, duress and coercion to execute the Discharge Voucher. Further, considering that AFPL had not been provided a copy of the Final Survey Report, which formed the basis of the calculations regarding the claims, the Arbitral Tribunal held that AFPL was entitled to dispute the arbitrary deductions made from the claims made by it. The Arbitral Tribunal rejected OICL's contention regarding non-production of the Arbitration Agreement on the ground that the wordings of the Standard Fire and Special Perils Policy are standard form and are approved by the Insurance Regulatory and Development Authority (IRDA) and thus, OICL could not raise a contention regarding the non-existence of an agreement to refer the disputes to arbitration.

10. Insofar as the merits of the disputes are concerned, the Arbitral Tribunal noted that the following items were insured:-

Table 2

S. No.	Description of Property	Sum Insured (₹)
1.	Building (with Plinth and	6,00,00,000

	Foundation)	
2.	Plant and Machinery	1,20,00,000
3.	Stocks of all types of Raw Material, goods in progress, semi-finished and finished goods	2,50,00,000
4.	Total	9,70,00,000/-

11. Regarding AFPL's claim on account of erroneous disallowance of the insurance claim pertaining to the plant and machinery, the Arbitral Tribunal awarded AFPL a sum of ₹90,71,367.25/-, including GST against AFPL's quantification of the said loss amounting to ₹1,32,00,392/-. Since AFPL could not produce any independent witness for substantiating its claim, the Arbitral Tribunal based its calculation on the Final Survey Report. The Arbitral Tribunal noted that according to the Surveyor, the loss suffered by AFPL, without depreciation, stood at ₹88,87,287.25/-. If depreciation was to be added, the value would be below the amount of loss, assessed by the Surveyor. The learned Arbitrator held that there was no evidence on the part of AFPL to establish the loss claimed in its Statement of Claims in respect of the plant and machinery. Thus, the Arbitral Tribunal affirmed the quantification as made by the Surveyor in its Final Survey Report. However, the Arbitral Tribunal awarded AFPL the cost of two Roughing and Grinding Machines, quantified at ₹1,84,080/- (₹92,040/- each). The Arbitral Tribunal also held that OICL was not justified in deducting 5% of the Plant and Machinery as

salvage, since the same was based on the theoretical value of salvage and not its actual value.

12. Next, the Arbitral Tribunal examined AFPL's claim for disallowing the insurance claim pertaining to the building (Claim No 2 in Table 1 hereinabove). Against this claim, the Arbitral Tribunal awarded AFPL a total sum of ₹4,40,77,108.94/-, including GST. This claim was divided into three parts, namely, (a) Finishing based on DSR-2016 rates; (b) Retrofitting based on Water Resources Department, Government of Karnataka, Schedule of Rates 2016-2017; and (c) (Electrical, Plumbing and Sanitary, Fire Fighting System) based on CPWD Plinth Area Rates 2012 with Cost Index. Regarding Part (a), the Arbitral Tribunal noted that the amount claimed as per DSR-2016 rates was ₹90,39,143.49/- while the amount allowed stood at ₹84,00,019.71. The Arbitral Tribunal accepted AFPL's contention that the 5% contingency had been incorrectly disallowed by the Surveyor. It held that the Surveyor should not have disallowed AFPL's claim in the absence of a provision for contingent expenses. Regarding Part (b), the Arbitral Tribunal found that the Surveyor, in its Final Report, had noted that the staircase was broken and damaged due to the fire. However, AFPL's claim in this regard had not been allowed. The Arbitral Tribunal awarded a sum of ₹2,54,190/- for retrofitting with respect to the staircase. With regard to Part (c), the Arbitral Tribunal awarded the loss incurred by AFPL in respect of 'extra items' to the tune of 7.25%, since it found that the Surveyor had incorrectly interpreted the CPWD Plinth Area Rates 2012. Further, the

Arbitral Tribunal held that AFPL was entitled to 23.75% of the total cost of Building (totaling to ₹4,40,77,108.94/-).

13. Next, the Arbitral Tribunal considered AFPL's claim regarding the disallowance of its insurance claim pertaining to stocks. The Arbitral Tribunal found that the Surveyor's calculation was erroneous, since it had limited the allowable loss to the sum insured and then deducted 10% on account of speculative dead stock. The only deduction the Surveyor could have made was undisputed salvage value, which was admitted by AFPL to be ₹65,000/-. Thus, AFPL was held to be entitled to a sum of ₹2,49,35,000/-, in this regard.

14. AFPL's claim regarding interest of 2% above the bank rate, in view of Clause 15 of the IRDA (Protection of Policyholders' Interests) Regulations, 2017 was accepted by the Arbitral Tribunal and it awarded interest at the rate of 8.25% per annum from 11.04.2018 till the date of payment. The Arbitral Tribunal arrived at this figure by adding the Bank Rate fixed by the Reserve Bank of India (at the beginning of FY 2018-19), that is, 6.25% and 2% in terms of Clause 15 of the IRDA Regulations.

15. The Arbitral Tribunal found that the Surveyor was responsible for the delay in submitting its Final Report beyond the statutory period of ninety days from the date of its appointment and held that AFPL was entitled to interest for the delayed period (120 days).

16. The next aspect considered by the Arbitral Tribunal was regarding the deduction of 5% from the assessed amount towards

excess waiver. The Arbitral Tribunal held the stipulation of exclusion of 5% of each and every claim was applicable only to Act of God (AOG) perils and in respect of all other perils, the sum was fixed at ₹10,000/-. Therefore, the deduction under this head was restricted to ₹60,000/-. With regard to the claim on account of erroneous disallowance of insurance claim pertaining to firefighting equipment, the Arbitral Tribunal awarded AFPL a sum of ₹7,96,500/- along with a sum of ₹1,93,796/-, which had already been given to AFPL by OICL. The Arbitral Tribunal observed that the Surveyor ought to have awarded the aforesaid amount, keeping in view that the Surveyor had verified the 'No Objection Certificate' dated 04.10.2017 issued by the Haryana Fire and Emergency Services and the fact that most of the fire-fighting equipment had been destroyed in the fire. The claim made by AFPL, for the cost incurred by it for the removal of debris on actuals basis was rejected by the Arbitral Tribunal and it affirmed that only 1% of the claim amount could be paid to AFPL in terms of the Policy.

17. Finally, the Arbitral Tribunal considered AFPL's claim for GST, which as per its contention before the Arbitral Tribunal, was an actual expense incurred to avail services and on purchase of machinery. In this regard, the Arbitral Tribunal held that AFPL would be entitled to the payment of GST for retrofitting, since the same is to be treated as an expense and AFPL would be ineligible for Input Tax Credit (ITC). On the question of GST in respect of plant and machinery, the Arbitral Tribunal held that AFPL would be entitled to

reimbursement of the GST component under the head of Plant and Machinery only after the repairs to the plant and machinery were carried out and the GST Commissioner has scrutinized the return thereon,

18. Thus, the Arbitral Tribunal awarded the following relief to AFPL:-

Table 3

Claim No.	Particulars	Amount (in ₹)
Claim No. 1	Plant & Machinery – Total claim allowed (excluding GST)	74,47,189.95/-
Claim No. 2	Building – Total Allowed Claim (with GST)	4,40,77,108.94/-
Claim No. 3	Stock – Total Allowed Claim	2,49,35,000/-
Claim No. 4	Interest – Total Allowed Claim as on 28.08.2020 at the rate of 8.25%	51,15,789.05
Claim No. 5	Policy Excess – Total Allowed Deduction/Adjustment	-60,000/-
Claim No. 6	Fire Fighting – Total Allowed Claim	9,90,296/-
Claim No. 7	Removal of Debris – Total Allowed Claim	2,88,640/-
GST	Total GST (subject to submission of GST certificate)	16,24,177.31/-
	Total Award Amount with interest till 28.08.2020 (date of award)	4,08,94,307.99/-
	Total Entitlement along with GST with interest till 28.08.2020 (subject to GST certificate)	4,25,18,485.29/-

19. Aggrieved by the Arbitral Award dated 28.08.2020, OICL has filed the present petition.

Submissions

20. Mr. Joy Basu, the learned Senior Counsel appearing for OICL, has assailed the impugned award on, essentially, three grounds. First, he contended that there was a full and final settlement of the insurance claim by AFPL by executing the Discharge Voucher. Second, that the denial of deduction on account of underinsurance is patently illegal and contrary to the agreement between the parties. And third, that the Arbitral Tribunal's deduction of 5% under the Excess Clause is contrary to the terms of the Policy.

21. At the outset Mr Basu submitted that the Discharge Voucher was signed by AFPL free from undue influence, coercion and pressure. AFPL did not protest the same either. The Arbitral Tribunal has provided no reasons for its conclusion that AFPL's execution of the Discharge Voucher was not out of its free will. He relied on the decision of the Supreme Court in ***Dyna Technologies Private Limited v. Crompton Greaves Limited.: (2019) 20 SCC 1***, and contended that the impugned award was liable to be set aside as OICL's contention regarding discharge by accord and satisfaction, was rejected without providing any reasons. He further contended that the practice of execution of Discharge Vouchers and No-Objection Certificates as a precondition to release of amounts is an accepted practice in government departments and Public Sector Undertakings. He also

contended that the Arbitral Tribunal should have dealt with and disposed the challenge to its jurisdiction, filed by OICL under Section 16 of the A&C Act, at the first instance and not along with the final Award.

22. Next, Mr. Basu contended that the Arbitral Tribunal's rejection of deduction on account of underinsurance is patently illegal and runs contrary to the agreement between the parties. He submitted that the sum insured is always proposed by the insured and the insurer has no say in it. Since AFPL itself had insured the machinery for a value of ₹1,20,00,000/-, it could not now state that there was an agreement on the value at the time of inception of the Policy. He contended that it is well established that the value of an item is always declared by the insured at the time of inception of a policy and the value of underinsurance is calculated by the insurer at the time of assessment of loss.

23. Lastly, Mr Basu contended that the Arbitral Tribunal's rejection of the deduction of 5% under the Excess Waiver Clause was contrary to the terms of the contract. It amounted to foisting a new contractual term on the parties and therefore the impugned award was liable to be set aside.

24. Mr. Sachin Dutta, learned Senior Counsel appearing for AFPL, countered the aforesaid submissions. He submitted that the petition ought to be dismissed, since the grounds for interfering with an Arbitral Award are limited under Section 34 of the A&C Act and in

this case, this narrow threshold is not met. He relied on the decision of the Supreme Court in *Steel Authority of India Limited v. Gupta Brother Steel Tubes Limited: (2009) 10 SCC 63*, and submitted that even if there is an error in the interpretation of a contract by an Arbitrator, the same is within his jurisdiction and such error is not amenable to correction by the courts as the same is not an error on the face of the record.

25. In regard to the application filed by OICL under Section 16 of the A&C Act, he submitted that the Arbitral Tribunal had come to its conclusion only after appreciating the evidence on record. He submitted that courts have held in various decisions that insurance companies cannot insist on the insured signing a Discharge Voucher as a pre-condition for releasing the amount. He referred to the decisions in *National Insurance Co. Ltd. v. Boghara Polyfab (P) Ltd.: (2009) 1 SCC 267*; *Oriental Insurance Company Ltd. v. Mercury Rubber Mills: (2012) 127 DRJ 650(Del)*; and *Worldfa Exports Pvt. Ltd. v. United India Insurance Co. Ltd.: Arb. P. 459/2015, decided on 11.12.2015*, in support of his contention. Next, he submitted that the Arbitral Tribunal had rightly denied deduction on account of underinsurance as there was no underinsurance and the such deduction could not be made without reference to the value of the asset at the time of insurance.

26. With regard to the contention that the Arbitral Tribunal's deduction on account of 5% Excess being illegal, Mr. Dutta contended that contractual interpretations are within the domain of the Arbitrator

and the learned Arbitrator had arrived at its decision after duly recording the submissions of the parties and considering the relevant contractual principles.

Reasons and Conclusion

27. The first and foremost issue to be examined is whether the impugned award is unreasoned insofar as it rejects OICL's contention that the contract of insurance between the parties was discharged by accord and satisfaction. It was contended on behalf of OICL that the Arbitral Tribunal had not specifically returned any finding that AFPL was in financial distress and its financial condition was so dismal that it had no option but to accept the amounts as offered by OICL. Therefore, the impugned award is liable to be set aside as being unreasoned.

28. This Court finds the aforesaid contention without any merit. A plain reading of the impugned award indicates that the Arbitral Tribunal had noted the submissions made on behalf of AFPL that the Discharge Voucher was executed in compelling circumstances and therefore, did not discharge the contract by accord and satisfaction. The Arbitral Tribunal specifically noted the contention that "*the compelling circumstances of desperate need for money have been stated in the SOC and have been brought out in evidence also*". Having noted the aforesaid contention, the Arbitral Tribunal proceeded to hold that it was "*of the view that there is more force in the contentions of the Claimant, in the background of the Arbitration*

and the evidence on record, despite the persuasive arguments of Shri. Mohit Arora, learned Counsel for the Respondent Insurance Company”.

29. There is no ambiguity in the impugned award and it is clear that the Arbitral Tribunal had accepted the contention that the compelling circumstances, with regard to need of money, had been stated in the Statement of Claims and also been brought in evidence. It is also material to note that Mr. Akash Kapoor, Executive Director of AFPL had led evidence by way of an affidavit. In his affidavit, he had, *inter alia*, affirmed as under:

“Pertinently, the Respondent [petitioner herein] insisted that the Claimant sign on a pre-printed format/document as a pre-condition for receiving money. The Claimant [the petitioner] succumbed to such practices of the Respondent in view of extreme duress to which the Claimant was subjected. Any delay in receipt of the money would have meant financial annihilation of the Claimant. The Claimant was forced to give their concurrence to the assessment of the claim at an amount less than the claimed amount. The Respondent made it clear that without providing this concurrence no amount would be released to the Claimant and therefore, the Claimant would continue to languish. Therefore, left with no other option, the helpless Claimant had to forcibly accept the assessment under duress and coercion.”

[underlined for emphasis]

30. Thus, CW-1 had affirmed that any delay in receipt of the money would have resulted in a financial collapse of AFPL. It is relevant to note that although CW-1 was cross-examined at length in regard to the

assertion that AFPL had submitted a Discharge Voucher involuntarily and under undue influence, he was not cross examined on the aspect that delay in the receipt of funds would have led to AFPL's "*financial annihilation*".

31. The Arbitral Tribunal had also reproduced the response of CW-1 to certain questions posed to him in his cross-examination. The same are reproduced below:

"Q. 12: Were you forced for signing any of the discharge vouchers?

Ans.: I received a phone call from Ms. Guneet Kaur, CBRO office, that may payment of Rs.2 Crore is being released as an interim relief and for that I have to sign a pre-printed discharge voucher. I objected to this and requested them to get the payment first and to kindly settle my claim since it has been languishing for a year. She told me it is obligatory and a pre-condition to sign the discharge voucher first and then only any payment will be released"

"Q.15 Is there any document / statement in the Statement of Claim, from the Respondent saying either you take it or leave it?

Ans.: it was told to me verbally."

32. The Chief Regional Manager, CBRO of OICL was also cross-examined. The relevant questions and his responses, as noted by the Arbitral Tribunal, are reproduced below:

"Q.22: I suggest to you that no payment would have been made to the Claimant unless he had given the discharge

voucher which was a precondition as per prevalent practices of the Insurance Company. What do you say?

Ans.: Yes. The discharge voucher is a necessary requirement for all the claims whether minor or major.”

Q.23: Is it correct that the discharge voucher is a standard form printed by the Insurance Company?

Ans.: Yes. It is correct. Witness volunteers: However, the Insured while signing the discharge voucher can always qualify the same by putting his comments and the hand written comment will supersede the printed matter.

Q.24: As per prevalent practice, is it permissible for the Insurance Company to release any amount to the Insured if any objection is raised to furnishing of discharge voucher by putting hand written comments on the same?

Ans.: It is not permissible. However, if the discharge voucher is qualified by the Insured, the matter would have been escalated to the Head Office for their observations and further guidance in the matter.

Q.33: I suggest to you that the so-called discharge voucher mentions acceptance of amount by the Claimant even prior to payment having been made by the Respondent Insurance Company to the Claimant. What do you say?

Ans.: Yes. It is correct.

Q.35: Would it be correct to say that the so-called discharge voucher was printed by the office of the Respondent Company?

Ans.: Yes.”

33. In view of the above, there is ample evidence on record that AFPL had been compelled to sign on a Discharge Voucher in the

given format. This Court finds no infirmity with the aforesaid conclusion.

34. In view of the unambiguous decision of the Arbitral Tribunal that it had accepted the contention advanced on behalf of AFPL, Mr. Basu's contention that the impugned award is unreasoned, is erroneous.

35. The decision in the case of *Dyna Technologies Private Limited v. Crompton Greaves Limited* (*supra*) is of little assistance to OICL. In that case, the Supreme Court had observed that even if the court comes to the conclusion that there are certain gaps in the reasoning for the conclusions reached by the Tribunal, courts need to have regard to the documents submitted by the parties and the contentions raised before the Tribunal. This is to ensure that even awards with inadequate reasons are not set aside in a casual manner. The Supreme Court further clarified that only unintelligible awards, where there are no reasons at all, are required to be interfered with on the ground that the same falls foul of Section 31(3) of the A&C Act. The relevant extract of the said decision is set out below:

“36. When we consider the requirement of a reasoned order three characteristics of a reasoned order can be fathomed. They are: proper, intelligible and adequate. If the reasoning in the order are improper, they reveal a flaw in the decision making process. If the challenge to an award is based on impropriety or perversity in the reasoning, then it can be challenged strictly on the grounds provided under Section 34 of the Arbitration Act. If the challenge to an award is based on the ground

that the same is unintelligible, the same would be equivalent of providing no reasons at all. Coming to the last aspect concerning the challenge on adequacy of reasons, the Court while exercising jurisdiction under Section has to adjudicate the validity of such an award based on the degree of particularity of reasoning required having regard to the nature of issues falling for consideration. The degree of particularity cannot be stated in a precise manner as the same would depend on the complexity of the issue. Even if the Court comes to a conclusion that there were gaps in the reasoning for the conclusions reached by the Tribunal, the Court needs to have regard to the documents submitted by the parties and the contentions raised before the Tribunal so that awards with inadequate reasons are not set aside in casual and cavalier manner. On the other hand, ordinarily unintelligible awards are to be set aside, subject to party autonomy to do away with the reasoned award. Therefore, the courts are required to be careful while distinguishing between inadequacy of reasons in an award and unintelligible awards.”

36. In the present case, the reasons that persuaded the Arbitral Tribunal to accept AFPL’s claim are apparent, and this Court concurs with the same.

37. The next question to be examined is whether the impugned award is liable to be set aside insofar as the Arbitral Tribunal has rejected the deduction made by the Surveyors from the amount due to AFPL, on account of underinsurance. The entire plant and machinery were insured for ₹1,20,00,000/- (Rupees One Crore and Twenty Lacs). The Surveyors had determined the market value of the said machinery at ₹1,54,36,246.90/- and had accordingly, proceeded on the basis that the plant and machinery in question had been underinsured

to the extent of 22.26 %. The Surveyor had accordingly reduced the assessed claims in the aforesaid proportion.

38. The Policy is dated 25.10.2017 and the date of loss was 09.12.2017. The Arbitral Tribunal noted that the entire plant and machinery was insured for a sum of ₹1,20,00,000/-, as agreed to by the parties. Indisputably, OICL had accepted the said value.

39. The Arbitral Tribunal also noted that the plant and machinery was purchased on various dates from 2012 to 2016 and its insurance value of ₹1,20,00,000/- was determined by applying depreciation on the purchase cost of plant and machinery. OICL's witness (RW-1) had affirmed that *"PRV is Present Replacement Value which would mean the replacement cost of a machine or an asset as on date of loss"*. The Surveyor had determined the replacement value on the depreciated value of new plant and machinery as on the date of loss. The Tribunal noted that it had obviously ignored the inflation factor amongst others involved in appreciation of the cost. The Arbitral Tribunal further observed that it was nobody's case that there was any misrepresentation of fraud on the part of AFPL in the matter regarding valuation of plant and machinery at the time of entering into the contract of insurance.

40. A plain reading of the impugned award indicates that the Arbitral Tribunal did not accept that there was any underinsurance primarily for the reason that the Surveyor had calculated the value of the plant and machinery, as on date of the loss, while the machinery

had been purchased on various dates between 2012 to 2016. Accordingly, the said plant and machinery had been valued at its depreciated cost as on the date of the Policy, which was agreed at ₹1,20,00,000/-. This Court is not required to re-appreciate the evidence and cannot supplant its view in place of that of the Arbitral Tribunal. The grounds on which the arbitral award can be interfered with are limited. In ***Dyna Technologies Pvt. Ltd. v. Crompton Greaves Ltd.*** (*supra*) – the decision relied upon on behalf of OICL – the Supreme Court had held that the courts would not interfere “*unless the Court comes to a conclusion that the perversity of the award goes to the root of the matter without there being a possibility of alternative interpretation which may sustain the arbitral award*”. The Court also held that “*The mandate under Section 34 is to respect the finality of the arbitral award and the party autonomy to get their dispute adjudicated by an alternative forum as provided under the law.*”. The Court further observed as under:

“25. Moreover, umpteen number of judgments of this Court have categorically held that the Courts should not interfere with an award merely because an alternative view on facts and interpretation of contract exists. The Courts need to be cautious and should defer to the view taken by the Arbitral Tribunal even if the reasoning provided in the award is implied unless such award portrays perversity unpardonable under Section 34 of the Arbitration Act.”

41. The view that there was no underinsurance is a plausible one. Thus, this Court finds no reason to interfere with the impugned award insofar as the conclusion of the Arbitral Tribunal that there is no

underinsurance. The last aspect is to be examined is whether the Arbitral Tribunal had erred in restricting the Excess/Deductible under the Policy to ₹60,000/- (Claim No. 5). OICL had deducted an amount of ₹24,84,669/- from the assessed amount towards the excess to be borne by the insured. AFPL had contested the same and contended that the Standard Fire and Special Perils Insurance Policy had limited the waiver to ₹10,000/- in respect of all perils other than those resulting from lightening and certain other 'AOG Perils' (Acts of God). In its Statement of Claims, it claimed that it was not open for OICL to unilaterally deduct a larger sum contrary to the Standard Fire and Special Perils Insurance Policy. The claim as articulated by AFPL in its Statement of Claims is reproduced below:

“50. That the terms and conditions of the Insurance Policy clearly state the following:

“SIGNIFICANT EXCLUSIONS

Losses/Expenses not covered:

5% of each and every claim subject to minimum of Rs.10,000 resulting from Lightning, STFI and Subsidence and Landslide including Rockslide (AOG Perils) Rs. 10,000 in respect of all other perils.

Expenses incurred on Architects, Surveyors' Consultant Engineers fees and Debris Removal in excess of 3% and 1% of the claim amount respectively.

Loss of earnings, loss by delay, loss of market or other consequential or indirect loss or damage of any kind.”

51. That a bare perusal of the Excess Clause clearly reveals that for a loss arising out of perils other than Act of God Perils, the applicable excess is Rs. 10,000/- therefore, by virtue of the said clause, the Respondent is entitled to deduct only Rs. 10,000/- as the cause of fire in the instant claim is admittedly a fire caused accidentally and not Act of God.

52. It is further submitted that the terms and conditions of a Standard Fire and Special Perils Policy issued by Insurance Companies, have been formulated and espoused by the Insurance Regulatory and Development Authority of India and cannot be altered by the Respondent unilaterally. In this regard, the said terms and conditions mandate that in the event of a loss arising out of a peril other than an “Act of god Peril”, the applicable excess would be Rs.10,000/-. However, in the instant case, the Respondent has unlawfully deducted flat 5% from the Assessed Amount.”

42. AFPL had, accordingly, claimed that OICL was liable to pay ₹24,74,669/- along with interest to AFPL (Claim no. 5).

43. OICL had disputed the above. In its Statement of Defence, it stated that the deduction was made in accordance with the terms and conditions of the insurance policy. It stated that the insurance policy itself provided for Excess to be computed at 5% subject to minimum of ₹10,000/-. The Clause of the Policy, as referred to by OICL, is reproduced below:

“Total Sum Insured in Words : Indian Rupees Nineteen Crores Eighty Lakhs Only

Total Premium In Words : Indian Rupees Two Lakhs Twenty-Nine Thousand Two Hundred Only

Excess / Deductible :		
The following minimum deductibles are applicable based on per Location Sum Insured of the policy.		
Sum Insured Band per Location (including endorsements, If any)	Material Damage	
	% Of Claim	Subject to Minimum Deductible in INR.
Upto 10 Cr	5	10,000.00
Above 10 Cr and upto 100 Cr	5	25,000.00
Above 100 Cr and upto 1500 Cr	5	500,000.00
Above 1500 Cr and upto 2500 Cr	5	2,500,000.00
Above 2500 Cr	5	5,000,000.00

”

44. A reading of the impugned award indicates that the Arbitral Tribunal did not refer to the Clause as relied upon by OICL and as quoted above. Instead, the Arbitral Tribunal referred to the Clause regarding exclusions under a Standard Fire and Special Perils Insurance Policy and held that the maximum deduction under that head could be taken as ₹60,000/- towards the six claims as noted to by the Surveyor and accordingly, held that the total adjustment under the head - Policy Excess was ₹60,000/-.

45. It is at once clear that the Arbitral Tribunal has not addressed the issue in dispute. There is no dispute that the Insurance Policy in question included the Clause, setting out a tabular statement, indicating the amounts to be deductible on account of Excess. AFPL had contended that it was not open for OICL to unilaterally include the said Clause, which according to it, was contrary to the Standard

Fire and Special Perils Insurance Policy that was also accepted by IRDA (Insurance Regulatory and Development Authority). The Arbitral Tribunal has completely ignored the Clause in the Policy and has proceeded to determine the claim on the basis of a Standard Fire and Special Perils Insurance Policy.

46. It did not address the dispute whether it was open for AFPL to question the Clause on the Policy and secondly, whether the Clause as included in the Policy issued by OICL was liable to be ignored. It is apparent that the Arbitral Tribunal has not considered the dispute and has accepted AFPL's claim without any reference to the Excess Clause under the Policy issued by OICL.

47. In the circumstances, the impugned award to the extent that it allows AFPL's regarding the Excess/Deductible, cannot be sustained (Claim No. 5). The impugned award is set aside to the aforesaid extent. The amount awarded to AFPL is required to be recomputed.

48. The petition is, accordingly, disposed of. The pending application is also disposed of.

VIBHU BAKHRU, J

MAY 18, 2021
RK