

\$~12 (2021)

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

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Date of decision: 21.09.2021

+ **FAO(OS) (COMM) 110/2021 & CM APPL. 28301/2021**

UNITED INDIA INSURANCE CO. LTD.

..... Appellant

Through: Mr. A.K. De and Ms. Ananya De,
Advocates.

versus

WORLDFA EXPORTS PVT.LTD.

..... Respondent

Through: Mr. Sachin Datta, Senior Advocate
with Ms. RitikaJhurani, Ms.
JipsaRawat and Mr. AkshayChitkara,
Advocates.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE TALWANT SINGH

RAJIV SHAKDHER, J.: (ORAL)

[Court hearing convened via video-conferencing on account of COVID-19]

1. This is an appeal preferred against the judgment of the learned single judge dated 10.03.2021, passed in OMP (COMM) 454/2017.

2. Mr. A.K. De, who appears on behalf of the appellant, says that, in consonance with the prayer made in the appeal, the challenge to the award is limited to the findings returned therein, *via-a-vis* Claim No.VIII, and the ostensible relief granted *qua* the same by the learned arbitrator.

2.1. To be noted, the learned arbitrator, in the award dated 25.07.2017 has dealt with Claim No.VIII in paragraph 22, which reads as follows:

“22. Claim No.VIII is on account of additional interest of 2%

p.a. above bank rate in view of Regulation 9 of IRDA (Protection of Policyholders' Interest) Regulations, 2002. In this context the relevant provisions of IRDA (Policyholders Interests) Regulations, 2002 with specific reference to Regulation 9(2) may be adverted to which provides that in no case shall a Surveyor take more than six months from the date of his appointment to furnish his report. Furthermore, Regulation 9(5) directs that the insurer is required to take a final call within 30 days to be computed from the date of the survey report, meaning thereby that the respondent insurance company was required under the relevant IRDA (Policyholders Interests) Regulations, 2002 to conclude the proceedings within outer limit of seven months in all which it apparently did not do and (thereby inviting liability under Regulation 9(6) to pay interest @ 2% above the bank rate prevailing at the beginning of the financial year in which the claim is reviewed by it. It may be recalled here that the fire incident in question occurred on 25.10.2012 and the Surveyor was appointed on 27.10.2012 and commenced survey on the said date itself but did not submit the requisite report within the stipulated period of six months to be computed from 27.10.2012. No specific argument or reply has been put forth on behalf of the insurance company towards this claim. In any case, the insurance company has absolutely no defence available to it regarding its liability to pay interest at the rate of 2% above the bank rate prevailing at the beginning of the financial year in question because it did not adhere to the time line contemplated in Regulation 9 of IRDA adverted to above and, therefore, the plea of the claimant company to this extent is also upheld.”

2.2. The summary, concerning the claims [which have been allowed or rejected], is provided in paragraph 27 of the award. Insofar as Claim No.VIII is concerned, the learned arbitrator has stated the following:

“Claim No. VIII -Allowed, awarding interest at the rate of 2% above bank rate w.e.f. 27.5.2013 on onwards on the amount held recoverable under this award.”

3. Mr. Sachin Datta, learned senior counsel, who appears on behalf of the respondent, on instructions of Ms. Ritika Jurani, says that, there is an element of ambiguity with regard to the interest, that has been awarded to the respondent, and therefore, the best way forward would be, for the parties, to agree to a fresh arbitration *qua* Claim No.VIII.

3.1. Mr. De, who appears on behalf of the appellant, submits likewise.

3.2. It is Mr. De's contention that, if the parties agree to a fresh arbitration, the learned arbitrator should decide Claim No.VIII, *de hors* the findings returned in paragraph 22 and the operative directions contained in paragraph 27 of the award *qua* Claim No.VIII.

4. Having regard to the aforesaid, we had suggested to the counsel for the parties, that we could appoint Hon'ble Mr. Justice A.K. Sikri, former Judge, Supreme Court of India, as an arbitrator, to adjudicate afresh upon Claim No.VIII .

4.1. Counsel for the parties say that, they can have no objection to the name suggested by the Court.

5. Accordingly, the appeal is disposed of in terms of the following agreed terms, given the fact that, the award is ambiguous, insofar as Claim No.VIII is concerned, which cannot be set right in appeal, given the view taken by the Supreme Court in the case of ***Project Director, National Highways No. 45E and 220 National Highways Authority of India versus M. Hakeem and Another*** 2021 SCC OnLine SC 473.

(i) The judgement of the learned single judge is set aside, to the extent, concerns Claim No.VIII.

(ii) Consequently, the subject award i.e. the award dated 25. 07.2017 is also set aside, insofar as it pertains to Claim No.VIII.

(iii) The parties, as agreed, will appear before Justice (Retd.) Mr. A.K.

Sikri for a fresh adjudication, with regard to Claim No.VIII.

(iv) To hasten the proceedings, counsels for the parties are agreed, that Justice (Retd.) Mr. A.K. Sikri would adjudicate upon Claim No.VIII, based on the pleadings already on record.

5.1. Before we conclude, we may note that, *via* the impugned judgement dated 10.03.2021, passed by the learned single judge, the petition preferred by the appellant [i.e. OMP (COMM) 53/2018] under Section 34 of the Arbitration and Conciliation Act, 1996 [in short "the 1996 Act"] was dismissed, while, as noted above, Section 34 petition filed on behalf of the respondent [i.e., OMP (COMM) 454/2017] was allowed, and since the challenge in instant appeal was limited to Claim No.VIII, as noted at the very outset, we have dealt with only, this aspect of the matter in the appeal.

5.2. Therefore, as of today, the award dated 25.07.2017, insofar as other aspects of the matter are concerned, remains undisturbed.

6. To hasten adjudication in the matter [given the fact that the dispute lies in a very narrow compass], the counsel and the authorised representatives of the parties, will appear before the learned arbitrator on 04.10.2021 at 4:00 p.m.

6.1. In case, the date and time given above is not convenient to the learned arbitrator, he will be at liberty to fix another date, which would be proximate to the date given by the Court.

7. The learned arbitrator will be paid fees, in accordance with the provisions of the Fourth Schedule appended to the 1996 Act. Needless to add, the arbitration proceedings will be conducted in consonance with the extant provisions of the 1996 Act, as may be applicable, including the provisions contained in the Sixth Schedule.

8. Parties will act on the digitally signed copy of this order.

9. Consequently, pending application shall also stand closed. The case papers shall stand consigned to the record.

RAJIV SHAKDHER, J

TALWANT SINGH, J

SEPTEMBER 21, 2021/pa

Click here to check corrigendum, if any

