

IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 15.02.2021

**O.M.P. (COMM) 518/2020 & I. A. Nos. 9835/2020, 9836/2020,
9838/2020, 9839/2020**

NEW INDIA ASSURANCE CO. LTD.

.... Petitioner

versus

RUDRAKSH LAMINATES PRIVATE LIMITED Respondent

Advocates who appeared in this case:

For the Petitioner: Mr A.K. Singla, Senior Advocate with Mr Abhishek Gola, Mr. Anshul and Mr. Akshit Sachdeva, Advocates.

For the Respondent: Mr Sanjiv Kakra with Mr Mayank Bhargava, Advocates.

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HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The petitioner has filed the present petition under Section 34 of the Arbitration and Conciliation Act, 1996 (hereafter the 'A&C Act') impugning an arbitral award dated 25.02.2020 passed by the Arbitral Tribunal (hereafter the 'impugned award'). The above-captioned petition is also accompanied by applications for condonation of delay in filing the petition (IA No. 9836/2020) and an application for condonation of delay in re-filing the petition (IA No. 9839/2020). By

an order dated 23.10.2020, a Coordinate Bench of this Court, while issuing notice, had expressly held that before hearing the above-captioned petition, these applications (IA No. 9836/2020 and 9839/2020) would be heard and decided.

2. By the application, (IA No. 9836/2020), the petitioner seeks condonation of delay of one hundred and ten days in filing the above-captioned petition. However, it is averred in the said application that there is no delay in filing the above-captioned petition since the period of limitation has been extended by the Supreme Court by an order dated 23.03.2020 passed in ***Suo Moto Writ Petition (Civil) No. 3/2020*** captioned ***RE: Cognizance for Extension of Limitation***. The said contention is stoutly contested by Mr Kakra, learned counsel who appears for the respondent.

3. In order to address the aforesaid controversy, it would be necessary to note a few relevant dates. The impugned award was delivered on 25.02.2020. The learned Arbitrator sent a scanned signed copy of the impugned award to the counsel for the parties by an e-mail sent on that date. The respondent also sent a copy of the impugned award to the petitioner by an e-mail on 28.02.2020. Thereafter, the respondent also sent a copy of the same by post under cover of its letter dated 29.02.2020. According to the respondent, the same was served to the petitioner on 03.03.2020. The tracking report of the courier agency indicating the same is annexed with the reply filed by the respondent. However, the petitioner claims that although its counsel had received the impugned award on 25.02.2020, he had

forwarded the same to the petitioner on 12.03.2020. Thus, according to the petitioner, the period of limitation for filing the above-captioned petition would commence on 12.03.2020.

4. The above-captioned petition was filed on 12.09.2020 at 04:20 pm. The same was examined and was found to be defective. This was communicated to the petitioner on 24.09.2020. The petition was once again re-filed on 07.10.2020, that is, after a period of thirteen days (the first re-filing). The petition, as re-filed, was found to be defective and this was communicated to the petitioner on 09.10.2020. It was once again re-filed on the next date, that is, on 10.10.2020 (the second re-filing).

5. The petition as originally filed was of 686 pages. The petition as re-filed on 10.10.2020 was of 714 pages but certain objections still remained unaddressed.

6. The petition was, accordingly, marked as defective and the same was communicated to the petitioner on 15.10.2020. The petition was re-filed on 17.10.2020 (the third re-filing). The petition was now 719 pages. However, certain objections still remained and this was communicated to the petitioner on 19.10.2020. The petition was re-filed on 21.10.2020 (the fourth re-filing). It was examined and listed before this Court on 22.10.2020.

7. It is seen from the above, that there has been a considerable delay in re-filing of the above-captioned petition. However, this Court is of the view that the same would not be fatal to the petition. The

matter relating to condonation of delay in re-filing the petition stands on a separate footing vis a vis, the question of delay in filing the petition. As noticed above, the number of pages had increased with each subsequent re-filing. However, the petition filed initially was not modified substantially. It is also seen that the defects were not such that would render the initial filing *non est*.

8. In view of the above, the application (IA No.9839/2020) is allowed and the delay in re-filing the petition is condoned.

9. The principal question to be addressed is whether the delay in filing the present petition is beyond the period as specified under Section 34(3) of the A&C Act.

10. Concededly, this Court has no jurisdiction to condone any delay in filing the petition beyond a period of thirty days after the expiry of the initial period of three months. Although it appears that the order was received by the petitioner on 25.02.2020, that is, the day on which it was communicated to its counsel. However, without entering into that controversy, the question of delay may be examined on the footing that the petitioner had received the impugned award on 12.03.2020, as claimed by it.

11. The period of three months in filing the petition would, thus, expire on 11.06.2020 and this Court is of the view that given the mitigating circumstances arising in the wake of outbreak of Covid-19, a delay of thirty days, which is the maximum period of delay that can be condoned by this Court under proviso to Section 34(3) of the A&C

Act, ought to be condoned. However, since the petition was filed on 12.09.2020, it is clearly beyond the period of delay that can be condoned under Section 34(3) of the A&C Act. Thus, the only question to be examined is whether the orders passed by the Supreme Court in ***Re: Cognizance for Extension of Limitation: Suo Moto Writ Petition (Civil) No. 3/2020*** would extend the period of limitation indefinitely as according to Mr Singla, learned Senior Counsel appearing for the petitioner, the time for filing the petition under Section 34 of the A&C Act is still continuing.

12. Mr Singla has founded his contention on the order dated 23.03.2020 passed by the Supreme Court in ***Re: Cognizance for Extension of Limitation: Suo Moto Writ Petition (Civil) No. 3/2020*** (*supra*). The relevant extract of the said order is set out below:

“To obviate such difficulties and to ensure that lawyers/litigants do not have to come physically to file such proceedings in respective Courts/Tribunals across the country including this Court, it is hereby ordered that a period of limitation in all such proceedings, irrespective of the limitation prescribed under the general law or Special Laws whether condonable or not shall stand extended w.e.f. 15th March 2020 till further order/s to be passed by this Court in present proceedings.

We are exercising this power under Article 142 read with Article 141 of the Constitution of India and declare that this order is a binding order within the meaning of Article 141 on all Courts/Tribunals and authorities.”

13. Subsequent to the said order, the Supreme Court considered an interim application, being ***Application No. 48411/2020*** in ***Suo Moto***

Writ (Civil) No. 3/2020, seeking appropriate directions in reference to arbitral proceedings and particularly, the period prescribed under Section 29A of the A&C Act. The Supreme Court noted that by its earlier order dated 23.03.2020, the Court had directed that all periods of limitation be extended with effect from 15.03.2020 till further orders and clarified as under:

“In case the limitation has expired after 15.03.2020 then the period from 15.03.2020 till the date on which the lockdown is lifted in the jurisdictional area where the dispute lies or where the cause of action arises shall be extended for a period of 15 days after the lifting of lockdown.

In view of the above, the instant interlocutory application is disposed of.”

14. By another application, being IA No. 49221/2020, further clarification was sought by the Hon’ble Supreme Court with respect to the period specified under Section 29A of the A&C Act as the said Section did not provide for any period of limitation but prescribed a time period within which the Arbitral Tribunal was required to make an arbitral award. The said application (being IA No. 49221/2020) was disposed of by the Hon’ble Supreme Court by an order dated 10.07.2020 with the clarification that the orders dated 23.03.2020 and 06.05.2020 would also apply for extension of the time prescribed under Section 29A of the A&C Act as well as under Section 23(4) of the A&C Act.

15. It is not disputed that the lockdown was finally lifted in the NCT of Delhi with effect from 01.06.2020. Thus, in terms of the

orders dated 23.03.2020 read with the order dated 06.05.2020 passed by the Supreme Court in ***Re: Cognizance for Extension of Limitation*** (*supra*), the period of limitation would expire on 15.06.2020 in the event that the same had expired after 15.03.2020 and prior to 01.06.2020.

16. In the present case, the period of limitation had expired on 25.05.2020 and thus, by virtue of the aforementioned orders passed by the Supreme Court, would stand extended to 15.06.2020. Even if the petitioner's contention that it had received the impugned award on 12.03.2020 is accepted, the period of limitation of three months as stipulated under Section 34(3) of the A&C Act would expire on 12.06.2020. Since this was after the lockdown was lifted in the NCT of Delhi, the afore-mentioned orders passed by the Supreme Court would not inure to the benefit of the petitioner. Of course, in addition to the above, the petitioner would also be entitled for a further period of thirty days in filing the petition.

17. However, since the above-captioned petition has been filed even beyond the said period, this Court is powerless to condone any further delay and the petition is required to be dismissed.

18. Mr Singla had referred to the decision of the Supreme Court in ***Sagufa Ahmed & Ors. v. Upper Assam Plywood Products Pvt. Ltd. and Ors.: Civil Appeal Nos. 3007-3008/2020, decided on 18.09.2020***, in support of his contention that the time period for filing the petition continues in view of the orders passed by the Supreme Court on 23.03.2020. In that case, the appellants had filed the appeal

impugning an order passed by the National Company Law Appellate Tribunal (NCLAT) dismissing the appellants' application for condonation of delay in filing the appeal and consequently, the appeal filed by the appellant against an order dated 25.10.2019 of the National Company Law Tribunal (NCLT) was also dismissed as barred by limitation.

19. The Court noted that the appellants had applied for a certified copy of the order dated 25.10.2019 on 21.11.2019 and the same was received by their counsel on 19.12.2019. The appellants had filed an appeal before the NCLAT on 20.07.2020 which was dismissed by the NCLAT on 04.08.2020 on the ground that it had no power to condone the delay beyond forty-five days. The Supreme Court proceeded on the basis that the period of limitation would start running at least from 19.12.2019 and the appellants were required to file their appeal within a period of forty-five days, which expired on 02.02.2020. The NCLAT could condone the delay up to a period of forty-five days and the said period commenced from 02.02.2020 and had expired on 18.03.2020. The appellants sought to rely on the order dated 23.03.2020 passed by the Supreme Court in ***Suo Moto Writ Petition (Civil) No. 3/2020*** (*supra*) and contended that the period to file the appeal, which was filed on 20.07.2020 stood extended by virtue of the said order. However, the said contention was not accepted by the Supreme Court and the appeals were dismissed. This Court is at a loss to understand as to how the said decision supports the petitioner's contention that the present petition is within the period of limitation.

20. Mr Singla had also relied upon the decision of the Supreme Court in ***M/s. SS Group Pvt. Ltd. v. Aaditiya J. Garg and Anr.: Civil Appeal No. 4085/2020 and Other Connected Matters, decided on 17.12.2020***. The said appeals were filed against an order dated 07.09.2020 passed by the National Consumer Dispute Redressal Commission (hereafter 'NCDRC') whereby NCDRC had declined to accept the Written Statement filed by the appellant as it was filed beyond the prescribed period of forty-five days. In that case, notices in the complaints were issued to the appellant in June 2020 and were received by the appellant on 13.07.2020 in each of the cases. The period of thirty days as prescribed to file a written response expired on 12.08.2020. The same could be extended for a further period of fifteen days, which expired on 27.08.2020. However, the written statement/reply was filed by the appellant before NCDRC on 31.08.2020. In that case, the Supreme Court referred to the order dated 23.03.2020 in ***Re: Cognizance for Extension of Limitation*** (*supra*) and extended a benefit to the appellant.

21. It is relevant to note that although the Supreme Court had referred to the order dated 23.03.2020 passed in ***Re: Cognizance for Extension of Limitation*** (*supra*), the subsequent order dated 06.05.2020 was not brought to the Court's notice. The Supreme Court, thus, proceeded on the basis that the order dated 23.03.2020 was still operative. Apart from the above, it is relevant to note that the order dated 06.05.2020 specifically covers cases under the A&C Act and those under Section 138 of the Negotiable Instruments Act, 1881.

The order dated 06.05.2020 did not refer to the Consumer Protection Act, 2019. Thus, this court is of the view that the order passed by the Supreme Court in *M/s. SS Group Pvt. Ltd. v. Aaditya J. Garg and Anr.* (*supra*) is of little assistance to the petitioner.

22. In view of the above, the petitioner's prayer that the delay in filing the above-captioned petition be condoned cannot be acceded to. IA No. 9836/2020 is, accordingly dismissed.

23. However, for the sake of the completeness, this Court also considers it apposite to consider the petition on merits as well.

24. The impugned award was rendered in the context of disputes that have arisen between the parties in relation to two Standard Fire Special Peril Policies (hereafter 'policies') purchased by the respondent from the petitioner.

25. By the impugned award, the Arbitral Tribunal had directed the petitioner to pay the respondent an amount of ₹5,66,28,930/- and in case, the said amount was not paid on or before 31.03.2020, the Arbitral Tribunal had directed that the awarded amount would carry simple interest at the rate of 12% per annum on the said amount, with effect from 26.02.2020 till actual payment.

26. The petitioner assails the impugned award to the extent as noted hereafter, as being perverse and in conflict with the public policy of India.

27. The relevant facts that are necessary to address the controversy, are briefly set out hereafter.

28. The respondent is, *inter alia*, engaged in the business of manufacturing Polyurethane (PU) Foam, Laminated Foam and Foam Scrubbers at its plants in Gurugram, Haryana (Unit No.1) and Khushkhera, Rajasthan (Unit No.2).

29. The respondent purchased two policies – (i) Policy No. 31280011140100000225 insuring the building, plant and machinery, other accessories, furniture, fittings, fixtures and other assets for a sum of ₹ 5,20,97,020/- from 30.10.2014 till 29.10.2015; and (ii) Policy No. 31280011140100000013 dated 30.09.2014 insuring stock for a total sum of ₹9,00,00,000/- for a period of one year commencing from 15.04.2014.

30. A fire broke out at the respondent's manufacturing Unit No. 2, situated at E-44/D1, Industrial Area, Khushkhera, District Alwar, Rajasthan on 24.11.2014 due to an electric short circuit. Admittedly, the fire was not a result of any fault or negligence on the part of the respondent and was merely accidental.

31. The respondent filed a claim for a sum of ₹ 16 crores (approximately) with the petitioner on 25.11.2014 and indicated the loss suffered under various heads. The surveyors submitted their final report dated 01.02.2016 (communicated to the Respondent by an e-mail dated 28.04.2016) assessing the amount payable at ₹7,46,85,440/-.

32. The respondent states that although the said amount was much less than its entitlement, the respondent was willing to accept the same as interim payment, as considerable time had elapsed and the respondent was in dire need of funds.

33. However, the Petitioner did not immediately release the approved amount of claim. This is because of a pending dispute between the Respondent and the State Bank of India (SBI) wherein the concerned court had enjoined the Petitioner from releasing the claimed amount to the Respondent.

34. The petitioner, by an e-mail dated 24.10.2017, sent a discharge voucher and called upon the respondent to accept the same in order for the petitioner to proceed further.

35. The respondent executed the discharge voucher and signed the same 'under protest' as it is their case that they had no option except to execute the same in order to receive the payment. Consequently, an amount of ₹7,31,13,160/- was released by the petitioner under the Joint Discharge Voucher and was directly paid to SBI as a part of a One Time Settlement between the respondent and SBI as at the material time, the respondent's account with SBI had been classified as a Non-Performing Asset.

36. Thereafter, by a notice dated 10.11.2017, the respondent invoked the arbitration clause and Justice (retd.) B.D. Ahmed, former Chief Justice of the Jammu and Kashmir High Court, was appointed as a sole arbitrator to adjudicate the disputes between the parties. The

parties referred the disputes to the Arbitral Tribunal, and the arbitral proceedings culminated in the impugned award.

37. Mr Singla assailed the impugned award on two fronts. First, he submitted that the Arbitral Tribunal had grossly erred in relying on the stock audit reports furnished by the respondent to its bankers. He stated that the respondent had two manufacturing units and the stock statements would disclose the stocks at both the said units. However, the fire had broken out only in the Khushkhera unit and therefore, the impugned award was fundamentally flawed. Second, he submitted that the Arbitral Tribunal had grossly erred in awarding interest as it was evident that the petitioner could not disburse the admitted amounts to the respondent because it was interdicted to do so by the Court in proceedings instituted by the respondent's bank against the respondent.

38. Neither of the said contentions is merited. This Court is unable to accept that any interference in arbitral award is warranted on the grounds as urged on behalf of the petitioner.

39. At the outset, it is relevant to note that there is no averment whatsoever in the present petition to the effect that the stock statements relied upon by the Arbitral Tribunal also included stocks lying at the premises, which were not affected by the fire. This Court also asked Mr Singla to point out if any such objections had been raised before the Arbitral Tribunal and he was unable to point out the same.

40. A plain reading of the impugned award also indicates that it was the respondent's case before the Arbitral Tribunal that the stock statement furnished to the bank reflected the stock at both the units – one in Khushkhera, Rajasthan where the fire incident had taken place and the other in Sector 37, Gurugram, Haryana. The same was also acknowledged by the surveyor in its final survey report. Thus, there is no reason to assume that the Stock Statements did not separately reflect the stocks at both the units.

41. The impugned award indicates that the learned arbitrator had carefully examined the registers produced by the respondent to substantiate its claim for loss of stock. It is apparent from the arbitral proceedings, and it is also not disputed before this Court, the issues related to the surveyor's assessment with regard to the loss of stock. The principal issues before the Arbitral Tribunal related to reduction of 10% on the basis of certain observations regarding the storage of the form blocks. And, further reduction of the claimed loss on account of the density of the blocks.

42. The Arbitral Tribunal noted that in normal cases the assessment of the experts would require to be accepted unless there are cogent reasons not to do so. After evaluating the evidence produced before it, the Arbitral Tribunal concluded that the surveyor had grossly erred in not accepting the books and registers produced before it as the same duly recorded the position of stocks with the respondent. The Arbitral Tribunal also noted that the stock statements also conformed to the payment of excise on clearance of stocks. The Tribunal thus

concluded that the stock registers and other books could not be rejected.

43. The Arbitral Tribunal also found, on evaluation of evidence, that the surveyor's conclusion that certain stocks had been incorrectly stored on machines was erroneous.

44. It is not necessary for this Court to examine the rival contentions that were advanced before the Arbitral Tribunal in any further detail. Suffice it to state that the impugned award is well reasoned. It is based on evaluation of the evidence and thus warrants no interference by this Court.

45. The contention that the Arbitral Tribunal had erred in awarding interest at the rate of 12% per annum on the amount awarded is also unmerited. The Arbitral Tribunal had noted that in terms of Regulation 9 of the 2002 Regulations, the surveyor report insofar as general insurance is concerned, is to be finalized within a period of six months from the date of the appointment of the surveyor. Further, a period of thirty days is granted to the insurer to consider the surveyor report and to either reject a claim or offer a settlement. In the event an offer of settlement is accepted by the insured, the settled amount is required to be paid within seven days from the date of acceptance of the offer. In the event of any delay in payment, the insurer is liable to pay interest at the rate of 2% above the bank rate prevalent at the beginning of the financial year in which the claim is reviewed. In the present case, the surveyor was appointed on 25.11.2014 and the final survey report with regard to stocks, was required to be furnished within a period of six

months of the said date, that is, on or before 24.05.2015. But the official survey report was submitted on 01.02.2016, which was, much beyond the aforesaid period of six months. The petitioner had not made an offer of settlement till October, 2017. Accordingly, the Arbitral Tribunal held that in so far as the fire claim against the loss of stocks is concerned, the petitioner would be liable to pay interest from 03.07.2015 (which is seven days after the expiry of thirty days from the last date on which the survey report ought to have been submitted) to 24.10.2017, that is, the date on which the amount of ₹3,22,95,285 was released to respondent's bank in terms of the directions issued by the Civil Court in Gurugram.

46. The Arbitral Tribunal had accepted that the period of furnishing the final survey report as far as the policy covering fixed assets is concerned, the same had a special condition pertaining to assessment on restatement value basis. Thus, the time for furnishing the final survey report was extended to twelve months and was required to be furnished by 25.11.2015. The Arbitral Tribunal noted that it was only in November-December, 2015 that it became clear that the respondent was not in a position to reinstate and therefore, the loss was required to be assessed on a market value basis. The surveyor had completed the assessment within a reasonable period thereafter and, had submitted its report on 01.02.2016. The petitioner had thirty days time to offer a settlement or reject the respondent's claim, but it did neither. Although, it accepted the claim as assessed by the surveyor on 25.05.2016 but it did not offer any settlement or make any payment till

October, 2017. The amount was finally released on 24.10.2017. Accordingly, the Arbitral Tribunal awarded interest at the rate of 12% per annum on the said amount. This court does not find any flaw in the reasoning of the Arbitral Tribunal. The rate at which interest has been awarded also cannot be held to be manifestly erroneous.

47. Mr Singla has contended that the petitioner was interdicted from releasing the payments to the respondent by the Civil Court in Gurugram and therefore was not liable to pay any interest on the same. The Arbitral Tribunal considered and rejected the said contention while observing that the petitioner could have deposited the said amount in the said court so that it could have been kept in a fixed deposit. However, the respondent continued to stay liable for the accruing interest on the loans taken from the plaintiff (respondent's bank) while the petitioner continued to delay the payments. The view expressed by the Arbitral Tribunal is certainly a plausible one and warrants no interference by this Court.

48. In view of the above, this Court finds no reason to interfere with the arbitral award. The petition is dismissed on account of delay, beyond a period as stipulated under Section 34(3) of the A&C Act, and on merits.

VIBHU BAKHRU, J

**FEBRUARY 15, 2021
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