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

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Date of Decision: 07th December 2021

+ **O.M.P. (COMM) 356/2021 and & IA Nos. 16153/2021, 16154/2021 & 16155/2021**

SUPERMINT EXPORTS PVT LTD Petitioner

Through: Mr Sudhanshu Batra, Senior
Advocate with Mr Bhaskar
Tiwari, Advocate.

versus

NEW INDIA ASSURANCE CO. LTD.

AND OTHERS

..... Respondents

Through: Mr Saurav Agrawal, Mr Arjun
Masters, Mr Ribhu Garg, Ms
Kavya Pahwa, Mr Anshuman
Chowdhary, Mr Anmol,
Advocates.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

VIBHU BAKHRU, J. (ORAL)

1. The petitioner has filed the present petition under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter the 'A&C Act') impugning an arbitral award dated 28.12.2019 (hereinafter the 'impugned award') rendered by the Arbitral Tribunal comprising of a learned Sole Arbitrator (hereafter the 'Arbitral Tribunal').

2. The impugned award was rendered in the context of disputes relating to the insurance claims made by the petitioner under the insurance policy issued by the respondent.

3. The petitioner is a company, *inter alia*, engaged in the business of manufacturing and dealing in mint and pine based essential oils. The petitioner had a valid “Standard Fire and Special Perils Policy” (Policy bearing no 34050011120100000163) (hereafter ‘**the Policy**’) with the period of insurance commencing from 20.08.2012 to 19.08.2013. In terms of the Policy, the petitioner was insured against the specified risks for a sum of ₹32,25,00,000/-

4. On 13.02.2013, a fire broke out in the petitioner’s manufacturing plant (property bearing no 4th Km., Bareilly Road, Panwaria, Rampur, Uttar Pradesh), resulting in substantial loss to the petitioner. The petitioner informed the respondent about the incident. Thereafter, on 15.02.2013, the respondent appointed one Mr Abhay Rastogi as the initial Spot Surveyor and he retrieved the data pertaining to the stocks held by the petitioner. The respondent also appointed one J Basheer and Associates Surveyors Private Limited (hereinafter ‘the Surveyor’) to assess the loss caused to the stock, building, and plant and machinery.

5. Thereafter, the petitioner, by a letter dated 21.03.2013, submitted its claim for an aggregate amount of ₹27,08,30,874.13 for loss under various heads as set out below:

1	Building	₹9,025,000
2	PPF	₹242,000
3	Plant & Machineries including electricals	₹72,410,059
4	Stocks of raw material, finished goods, packing materials, stores & spares, chemicals, stock in process etc	₹188,046,026.13
5	Fire Fighting Expenses by fire brigade	₹57,789
6	Cost of Removal of Debris, Cleaning by gas cutting, material equipment handling hire charges @ Rs 3 per Kg for 250 MTS approx	₹750,000
7	Architect & Surveyors fee	₹300,000
	Total	₹270,830,874.13

6. The Final Survey Report was filed on 10.02.2014 and the same quantified the loss suffered by the petitioner at ₹11,11,76,658. Thereafter, the petitioner, by an email dated 20.02.2014, requested the Surveyor to review its assessment as it contended that the same would eliminate “*the unjustified deduction in the value of our claims on stocks specifically*”.

7. Thereafter, on 05.03.2014, the Surveyor, by an addendum to the Final Survey Report, revised the loss on stock to ₹10,05,68,218/- and thereby, increased the estimate of losses from ₹11,11,76,658/- to ₹12,11,31,758/-. On the same date, the petitioner communicated to the respondent that the revised assessment of loss in stock was acceptable to it. However, on 10.03.2014, the petitioner submitted bills aggregating ₹13,78,757/- incurred as additional expenses, to the respondent.

8. Thereafter, on 14.03.2014, the respondent provided the Final Survey Report to the petitioner and deducted a sum of ₹5,53,749/- from the claim of additional expenses claimed by the petitioner and offered an amount of ₹12,19,56,766/- to the petitioner.

9. On 30.03.2014, the petitioner submitted a duly signed Discharge Voucher for accepting the sum of ₹12,19,56,766/- as full and final settlement of its claims.

10. On 27.05.2014, the petitioner requested the respondent to settle the claims expeditiously as it was facing acute hardship and financial obligations.

11. In the month of June, the Head Office of the respondent informed the concerned Divisional Office that the final amount approved against the claim preferred by the petitioner was ₹12,18,21,908/- as an amount of ₹77,249 in respect of reinstatement premium and ₹8498 on account of service tax had been deducted from the previously approved amount of ₹12,19,56,766/-.

12. Thereafter, on 02.07.2014, the respondent requested the petitioner to submit the signed Discharge Voucher along with signatures of its Banker. On the same day, the petitioner furnished the Discharge Voucher duly signed by the petitioner and its Banker.

13. On 04.07.2014, the respondent released the payment of ₹12,18,21,908/- to the petitioner. Thereafter, on 07.07.2014, the petitioner sent a protest letter and requested the respondent to pay the balance amount of ₹14,90,08,966.13/- along with interest at the rate of 24% per annum within a period of ten days. The respondent responded by a communication dated 15.07.2014 and denied the claims raised by the petitioner.

14. In view of the disputes between the parties, the petitioner invoked the agreement to refer the disputes to arbitration and filed a petition under Section 11 of the A&C Act before this Court. By an order dated 09.03.2017, this Court appointed the learned Sole Arbitrator to adjudicate the disputes between the parties.

15. The petitioner filed its Statement of Claims before the Arbitral Tribunal, *inter alia*, raising the following claims:

“1. Pass an Award of Rs. 13,46,28,227.00 (Rupees thirteen crores forty six lakhs twenty eight thousand two hundred twenty seven only) in favour of the Claimant and against the Respondent Company.

2. Pass an Award in favour of the Claimant granting Rs. 4,10,84,463.00 (Rupees four crores ten lakhs eighty four thousand four

hundred sixty three only) toward interest calculated @12% on amount of Rs. 24,89,96,697.00 from 13th February, 2013 till 4th July, 2014 i.e. date of payment.

3. Pass an Award in favour of the Claimant granting Rs 3,16,27,465 (three crores sixteen lakhs twenty seven four hundred sixty five only) toward interest calculated @ 12% on the amount of Rs. 13,46,28,227.00 from 4th July, 2014 till the filing of the present statement of Claim.

4. Pendente lite and future interest may be passed in favour of the Claimant and against the Respondent.

5. Cost of litigation may also be awarded to the Claimant.”

16. The Arbitral Tribunal found that the dispute raised by the petitioner was not maintainable as the contract of insurance stood discharged by accord and satisfaction. The petitioner had signed two Discharge Vouchers accepting the payment of ₹12,19,56,766/-, in full and final settlement of their claims. The Arbitral Tribunal held that in terms of the Discharge Vouchers, the claims made by the petitioner were not maintainable.

17. Mr Sudhanshu Batra, learned senior counsel appearing for the petitioner contended that the impugned award is vitiated by patent illegality as the Arbitral Tribunal had not examined the question whether the Discharge Vouchers had been executed under duress and economic coercion. He submitted that the Arbitral Tribunal had also erred in proceeding on the basis that the Circular dated 07.06.2016

issued by the Insurance Regulatory and Development Authority (IRDA) had practically superseded the earlier Circular dated 24.09.2015, in terms of which the insurance companies had been directed to refrain from using the instrument of discharge voucher as the means of estoppel against aggrieved policy holders when such policy holders approach judicial authorities for redressal of their grievances. He submitted that the Arbitral Tribunal had completely misread the decision of this Court in ***The United India Insurance Co. Ltd. v. Maja Health Care Division: OMP (COMM) 435/2017, decided on 12.03.2018.***

18. Mr Batra also referred to the decision of a Coordinate Bench of this Court in ***M/s Shreedhar Milk Food Ltd. v. M/s United India Insurance Co. Ltd.: OMP (COMM) 345/2017, decided on 26.04.2018.*** He submitted that in the said case, the Court had set aside an arbitral award, whereby the claims were rejected on the ground of furnishing discharge vouchers. He submitted that the said decision was subsequently affirmed by the Division Bench of this Court in ***United India Insurance Co. Ltd. v. M/s Shreedhar Malik Foods Ltd.: FAO (OS) (COMM) 220/2018, decided on 15.10.2019.***

19. A plain reading of the impugned award indicates that the Arbitral Tribunal had found that the Surveyor's assessment of loss was acceptable to the petitioner. The Tribunal noted that on 05.03.2014, the petitioner had sent a letter to the Surveyors confirming that the compensation of ₹10,05,68,214/- on account of loss of stocks was acceptable to it.

20. The Arbitral Tribunal found that the Final Survey Report had been furnished to the petitioner and it had, at no point of time, raised any objection with regard to the assessment of loss. The Tribunal noted that the petitioner had furnished two Discharge Vouchers. The first was issued on 30.03.2014 whereby it conveyed its acceptance to a sum of ₹12,19,56,766/- as full and final settlement of its claim. The petitioner had also executed another Discharge Voucher dated 02.07.2014, which had been counter signed by its Banker accepting the payment of ₹12,18,21,908/- as full and final settlement of its claims.

21. The said amount was disbursed to the petitioner. The same was in conformity with the loss assessed by the Surveyor. Considering that the petitioner had not contested the assessment and had further, signed the discharge voucher; the Arbitral Tribunal did not accept that the Discharge Voucher had been signed under coercion or economic duress. The conclusion of the Arbitral Tribunal is supported by the reasons as articulated in the impugned award. The question whether the petitioner had furnished the Discharge Vouchers under duress or coercion is a question of fact and the decision of the Arbitral Tribunal in this respect would not warrant any interference in these proceedings, unless the Court finds that the finding is wholly perverse and vitiates the award.

22. The Arbitral Tribunal's view in this case is a plausible view. It is certainly, a possible view. The same would warrant no interference in these proceedings. The decision in the case of *M/s Shreedhar Milk*

Food Ltd. v. M/s United India Insurance Co. Ltd. (supra) and *United India Insurance Co. Ltd. v. M/s Shreedhar Malik Foods Ltd. (supra)* are of little assistance to the petitioner. In that case, the Court found that the arbitral tribunal had not returned any finding that the discharge voucher was executed by the petitioner on its free will. The arbitral tribunal had also not returned any finding as to its effect on the claim of the petitioner.

23. In the present case, the Arbitral Tribunal has returned a definite finding that the petitioner had accepted the payments without any reservation. The Arbitral Tribunal has rejected the contention that the respondent had done anything to coerce the petitioner to execute the Discharge Vouchers.

24. In *Associate Builders v. Delhi Development Authority: (2015) 3 SCC 49*, the Supreme Court had observed as under:

“It must clearly be understood that when a court is applying the “public policy” test to an arbitration award, it does not act as a court of appeal and consequently errors of fact cannot be corrected. A possible view by the arbitrator on facts has necessarily to pass muster as the arbitrator is the ultimate master of the quantity and quality of evidence to be relied upon when he delivers his arbitral award. Thus an award based on little evidence or on evidence which does not measure up in quality to a trained legal mind would not be held to be invalid on this score. Once it is found that the arbitrators approach is not arbitrary or capricious, then he is the last word on facts.”

25. As stated above, in the present case, the view expressed by the Arbitral Tribunal is a plausible view and this Court is unable to accept that the impugned award warrants any interference in these proceedings.

26. The petition is, accordingly, dismissed. The pending applications are also disposed of.

DECEMBER 07, 2021
RK/v

VIBHU BAKHRU, J

[Click here to check corrigendum, if any](#)

