IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	29.11.2023
Pronounced On	28.03.2024

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

Arb.O.P.(Com.Div.)No.15 of 2023
and A.No.197 of 2023

The National Insurance Company Limited,
Vellore Divisional Office,
9, Infantry Road,
Vellore 632 001. ... Petitioner

vs.

Ascent Circuits Pvt.Ltd.,
Having Office at
No.111, SIPCOT, Phase I,
Hosur 635 126. .. Respondent

Prayer: Original Petition is filed under Section 34(2)(b)(ii) of the Arbitration and Conciliation Act, 1996, praying to set aside impugned Arbitral Award dated 15.10.2022 passed by the Arbitrators and received by the petitioner on 15.10.2022.

For Petitioner	:	Mr.S.Arun Kumar
For Respondent	:	Mr.N.P.Vijay Kumar

ORDER

The petitioner is aggrieved by the Award dated 15.10.2022 passed by the Arbitral Tribunal. By the impugned Award, the Arbitral Tribunal has allowed the claim of the respondent/claimant. Operative portion of the impugned Award reads as under :-

> "*17. The Surveyor has concluded that the source of ignition **'could be'** due to short circuiting in the heating element surrounding the Tin Bath inbuilt in the HASL machine and it cannot be seen in Isolation (refer to para 11 of survey report marked as Ex. R2). Therefore, the Surveyor had not come to conclusive finding that the cause of fire was triggered by short circuiting in the heating element but only expressed a tentative opinion about the cause of fire which is established by words '**would be**'.*
>
> *18. The Surveyor's manner of expression of opinion did not rule out the possibility of short circuit in the power lines to the motor in terminal box in full. It merely disagrees with the opinion of Mr. Thiagarajan and report submitted by Claimant. When there are two possibilities about cause of fire and there does not exist unimpeachable evidence to rule out one possibility and support the other possibility, then in such an event the Respondent must give benefit of doubt to the report given by the Claimant, in such insurance claims.*

Claimants Case

> *19. It is the case of the Claimant that HASL machine comprises of various mechanical and electrical components like -*
>
> *a) Motor*

b) Heaters covered with SS Steeling

c) Panel holder and dipping into Tin Bath

d) Tin Bath

e) Side Tank Pump for Tin Circulation.

20. The expert Mr. Thyagarajan in his opinion said that fire could be caused by short circuit in wire connecting the motor or by short circuiting the wire connecting the heating elements. Therefore, the cause of fire lies in the Motor or in the Heating elements. As confirmed by the surveyor in Cross-Examination, HASL machine is a composite machine comprising of various mechanical and electrical machines. Therefore, the fire was set up by short circuit in motor or the heating elements which are the electrical machines. The loss caused by such short circuit in motor or the heating elements can alone be excluded. It is inappropriate to treat HASL machine in entirety as cause of loss, when HASL machine comprises of several mechanical and electrical components/ equipment's and cach of these mechanical components/electrical equipment's can be repaired and replaced independently. In other words, repair of motor or the heating element does not require the replacement or repair of the entire HASL machine but requires the repair or replacement of only such motor or electrical equipment. This fact demonstrates that HASL machine is a composite machine comprising of various mechanical and electrical components/machines and when all these mechanical and electrical components/machines perform their respective functions, HASL machine delivers the desired output.

21. In a similar situation between the same parties, the issue of application of Clause (7) came up for consideration in Arbitral award dated 26.03.2020. We have the benefit of the entire award. NIC has *not disputed that this award was satisfied by them and no appeal was filed challenging the finding. The facts in issue are repetitive. It is as if another claim of the same genre had arisen, requiring a decision by a different panel of licensed surveyors, than the earlier panel.*

22. The Arbitral Tribunal in similar circumstances ruled that-

> ***"It is apparent that the "Exclusion clause" specifies those which are "destroyed or damaged by fire so set up" to be outside the ambit of exclusion and thus this would be covered under the policy issued and is indemnifiable in the event of Loss by Fire.***
>
> ***The exclusion clause cited clearly shows that stated causes such as over-running, excessive pressure, short circuiting, arcing, self heating or leakage of electricity" are not covered under the "Fire and Special Perils Policy" but losses by "fire so set up" are covered. It is not relevant whether components damaged by fire are housed in the same module or outside the module, since the cause of damage (whether "short circuiting" or "fire") is what is of relevance. Whatever is damaged by short circuiting etc. is not covered and whatever is damaged by fire "so set up" would be covered."***

23. It is surprising that NIC, which had the benefit of the earlier award dated 26.03.2020, chose to ignore the virtual binding nature of it. NIC and the surveyor, despite being afforded an opportunity to impugn the applicability of the said findings to the facts of this case, they were unable to do so. They failed to do so not because of any lack of effort. It was simple *because the facts were too glaring, direct and of the same kind, for the insurer to avoid the implication of the findings in the award dated 26.03.2020. It is unfortunate that NIC, a responsible and responsive PSU insurer chose to ignore the real and obvious. Instead, it compelled the insured to initiate these proceedings, incur time and expenses to establish a case, which they had already demonstrated, on the same set of facts covered by the earlier award between the same parties dated 26.03.2020. Such conduct on the part of NIC must lead to imposition of costs on them as incurred by the claimant as part of the award.*

24. To elaborate, in the present case, the 'fire so set up was due to the motor or the heating elements and not by the entire HASL machine. Therefore, the loss to such motor or Heater alone has to be excluded. The value of such motor or heater does not exceed more than Rs.7,500/-. This has been captured in the replacement value invoice.

25. The Award dated 26.03.2020 and the principles enunciated in the said award are directly applicable in the present case. The Respondent his accepted the Award dated 26.03.2020 and honoured the sald Award by making payment under the said Award to the Claimant. This fact of compliance of the award has not been disputed by NIC. The Respondent therefore cannot take a contrary view in the present clause, where the said principles are fully applicable. Accordingly, claim for the HASL machine is liable to be paid by the Respondent which is a sum of Rs.21,16,950/-

26. The surveyor has also excluded the loss relating to Lead Free Metal and Tin Metal inside the machine on the ground that Fire Policy excludes damage or destruction to property undergoing any Heating Process.

27. This is reflected in response to Q.No. 13 by Surveyor, before us. It is humbly submitted that Claimant has obtained SFSP Floater Policy which covers stock and work-in-progress but surveyor has not assessed the claim under the said policy. Fundamentally, it is settled law that utmost good faith is foundational principle in any contract of insurance and it is a two-way-street. NIC is as much bound by utmost good faith as ASC, read UIIC vs. MKJ Corporation, reported in AIR 1997 SC 408.

28. It is settled law that both parties are bound by the terms and conditions of the policy of insurance or policies of insurance, as entered into by them. Neither party can wriggle out of the obligations under it or them. The words in the policy of insurance are chosen by NIC. Even assuming without admitting that NIC had room to suggest as they have, it is not so clear to support their cause. It could well be construed as falling within the realm of ambiguity enabling the application of the well-known and inevitable principle of Rule of Contra Proferentum. The benefit of doubt, if any, shall go only to the claimant and not to the insurer. More so, when the language used by the surveyor is not clear, clinching and conclusive, as in this case.

29. For any and all the above reasons given by us, we are more than satisfied that the claimant has made out a fair case in these proceedings. The admission of liability of NIC ought to have been as pleaded and proved by claimant. The findings of the surveyor are mistaken and the decision of the insurer thereupon erroneous, Factually and legally, while the claimant has proved their case as they had done so previously also, as captured in the Arbitral Award dated 26.03.2020, between the same parties. in similar circumstances, NIC has failed to prove its defences. NIC has failed not for want of trying or because they failed to provide basis or evidence. NIC failed *because they were trying to establish what was not permissible or possible in the circumstances of the case. The defences of the insurer flew in the face of factual and legal reality. The paramount intention under a contract of insurance is to indemnify damages and the construction of the policy of insurance must be to subserve such purpose and not defeat the same.*

30. Accordingly, the Claimant is entitled to Lead Free Metal cost of Rs. 5.52.830 and Tin Metal cost of Rs.3.71,405.

Interest

31. Coming to interest liability, we are inclined to award the same since the award sum legitimately belonging to insured is with the Insurance Company till date. The Claimant deserves to be compensated for the duration of such loss. Ordinarily, we find that in such cases, even going IRDA Policy Holders Regulations, 2017, there is a time line granted for the insurers to decide on claims. Considering the nature of the claim, we feel it may be fit and proper to fix the interest liability on and from 17.10.2020 being one month after submissions of addendum dated 17.09.2020 to Final Survey Report dated 14.07.2020 and the rate of interest 7.5% p.a. which we find is granted against insurance companies, almost as a matter of rule in Motor accident claims, Oridinarily the insurer should have decided on the claim within one month from the date of Survey Report. Since the payment was made only on 02.03.2021, we are constrained to consider the payment of interest from 17.10.2020 which is one month after issue of Addendum Survey Report. Hence we fix the interest liability to commence from 17.10.2020. This meets the ends of justice.

Costs

32. We sent that under the amended Arbitration jurisdiction costs now follow the successful party unless the Tribunal has good and valid reasons to deny. In this case. we are satisfied that the Claimant was compelled to initiate the arbitration, spent time and money, to obtain the admissible indemnity. More so, when in an earlier arbitration claim almost on the same facts, insurer faced an award, which they chose to satisfy, If so, the Claimant deserves to be compensated by costs which we value for the purpose of award at Rs. 75000/- being the arbitrator fees, legal costs etc.

Summation

33. Claimant is therefore entitled to the following reliefs:-

Sl.No.	Particulars	Amount(Rs.)
1.	Cost of lead furnace and repairs to lead furnace	21,16,950
2.	Cost of lead-free metal inside the machine	5,52,830
3.	Cost of Tin metal inside	3,71,405
4.	Total to be allowed	30,41,185
5.	Less: Excess Excess of Rs.5 lac already applied while computing the net loss	-
6.	Net Loss/Liability	30,41,185
7.	Interest at 7.5% Rs.19,47,629/- from 17.10.2020 to 02.03.2021 = 54,427 Rs.30,41,185 from 17.10.2020 to 15.10.2022 = 4,54,928/-	5,09,355
8.	Costs of fees paid to three arbitrators by ASC	75,000

We have had the benefit of going through the opinion *of our colleague Mr. C. Venkatasubramanian dated 03.10.2022 who has expressed dissent to the findings. reasonings and conclusion given by the majority members of the Tribunal. We have gone through his opinion and do not agree with the reasonings, findings and conclusion in his opinion. Accordingly, the majority view shall be the award of the Tribunal.*

Final Award of the Tribunal

34. In the result, there shall be an award for Rs. 36.25,540/- (Rupees Thirty Six lakh Twenty Five Thousand Five Hundred Forty Only) (Being Rs. 30,41,185 + Rs. 5,09,355/- towards interest liability + Rs. 75.000 towards costs) in favour of claimant payable by the respondent insurance company. The said award shall be paid within three months from 15.10.2022, date of award, failing which NIC shall pay the award sum of Rs. 36,25,540/- (Rupees Thirty Six lakh Twenty Five Thousand Five Hundred Forty Only) as above, with interest at 18% p.a. on and from 15.10.2022 till date of realisation."

2. The brief facts of the case are that a fire accident is said to have taken place at the factory of the respondent/claimant on 03.06.2019 pursuant to which an intimation was sent to the petitioner by the respondent. On the following day Mr.S.Anantha Padmanaban, a Surveyor was deputed who gave his Final Report on 14.07.2020. The Surveyor sought for an expert opinion of one Mr.Thiagarajan.

3. Relevant portion of the aforesaid report dated 14.07.2020 reads as follows:-

> "*7.* ***The insured has confirmed in their replies, that, no one in the production area has seen fire emanating from the Electrical motor, which is the drive to the machine. It was only their initial inference and hence, is not authenticated. More so, when the cable connections to the motor are supposed to be flame proof type. Also, on visual inspection, we have not observed sustained burning marks on the motor. Hence, it is our considered opinion, that chances of fire emanating from this sources are far and few, in fact, remote."***

4. It is submitted by the learned counsel for the petitioner Mr.S.Arunkumar, that the view of Tariff Advisory Committee (TAC) was ignored by the Arbitral Tribunal while awarding the above amount to the respondent claimant learned Arbitrator.

5. The impugned award is challenged by the petitioner on the following grounds:-

i) The arbitrators failed to hold HASL machine as a single machine as per the Cross diagram given by the respondent, the drawing is already marked a document Ex.C.10, the components of a single machine cannot be seen separately and therefore the motor cannot be viewed as a part in isolation and he same can be testified from the letter dated 18.06.2020 in reply to the photographs marked as Ex.R.3.

ii) The arbitrator has failed to note that there is no agreement between the parties to pay interest if loss is reimbursed under the terms of Policy marked as Ex.R1 and the Arbitrators have invoked Motor Vehicles Act provision to award 7.5% interest from 17.10.2020 for the claim amount and interest for the amount already received by the respondent i.e. Rs.18,47,629/- and has thus rewritten the terms of contract of insurance policy.

iii) It is submitted that the conclusion arrived by the Arbitral Tribunal against the terms of contract and the principles laid down by the Hon'ble Supreme Court in **Sikka Papers Ltd. v. National Insurance Co. Ltd.,** 2009(7)SCC 777. The Tribunal without differentiating the facts involved in the previous settlement among the parties has blind foldly passed comments against the appellant with sole intention to grant the amount claimed by the respondent. The failure on the part of the Arbitrators to appreciate the factual and legal points raised by the appellant. Hence, the appellant prays that the award passed by the Arbitral Tribunal is liable to be set aside.

6. Defending the impugned order, it is submitted by the learned counsel for the respondent Mr.N.P.Vijaykumar, that what was damaged was only an element of the motor and therefore, there was no justification for excluding the amount while awarding the compensation for the entire machine in terms of clause 7 of the Standard Fire and Special Perils Policy

(SFSPP).

7. The learned counsel for the respondent would further submit that this was not even a part of the Arbitral Proceedings and therefore this argument cannot be entertained on this Original Petition under Section 34 of the Arbitration and Conciliation Act, 1996.

8. The learned counsel for the respondent has placed reliance on the following cases:-

i. ***UHL Power Company Limited*** *vs.* ***State of Himachal Pradesh****, (2022) 4 SCC 116;*

ii. ***Delhi Airport Metro Express Private Limited*** *vs****. Delhi Metro Rail Corporation Limited****, (2022) 1 SCC 131;*

iii. ***Dyna Technologies Private Limited*** *vs.* ***Crompton Greaves Limited****, (2019) 20 SCC 1;*

iv. ***DAG Private Limited*** *vs.* ***Ravi Shankar Institute for Music and Performing Arts****, 2023 SCC OnLine Del 3293;*

v. ***Mcdermott International Inc.*** *vs.* ***Burn Standard Co.Ltd and Others,*** *(2006) 11 SCC 181.*

vi. ***Batliboi Environmental Engineers Ltd. Vs. Hindustan Petroleum Corporation Limited,*** *2023 SCC OnLine SC 1208;*

vii. ***Narasingh Ispat Ltd. Vs. Oriental Insurance Co.Ltd. and another,*** *2022 6 SCC 654.*

9. The primordial issue that came up for discussion before the Arbitral Tribunal was for on account of Clause 7 under the caption General Exclusion to the Standard Fire and Special Perils Policy (SFSPP).

10. The aforesaid Clause of the Standard Fire and Special Perils Policy (SFSPP) reads as under:-

> "***Standard Fire and Special Perils Policy***
>
> ***(A).General Exclusions:-***
>
> ***(1)….***
>
> ***(2)…***
>
> ***(7). Loss, destruction or damage to any electrical machine, apparatus, fixture, or fitting arising from or occasioned by over-running, excessive pressure, short circuiting, arcing, self-heating or leakage of electricity from whatever cause (lighting included) or provided that this exclusion shall apply only to the particular electrical machine, apparatus, fixture or fitting so affected and not to other machines, apparatus, fixtures or fittings which may be destroyed or damaged by fire so set up."***

11. A reading of the above clause indicates that loss, destruction, or damage to any electrical machines, apparatus, fixtures or fitting arising

from or occasioned by over-running, excessive pressure, short circuiting, arcing, self-heating or leakage of electricity from whatever cause (lightning included) is not a ground for rejecting a claim.

12. As per the proviso, the above exclusion shall apply only to the particular electrical machine parts, fixtures, or fitting so affected. The above exclusion will not apply to other machines, apparatus, fixtures or fittings which may be destroyed or damaged by fire so set up.

13. The petitioner herein is inviting the attention of the Court on the disputed questions of fact as to whether the damage to the HASL machine was in the whole machine or a particular machine.

14. In fact, the Surveyor namely Mr.S.Anantha Padmanabhan in his report dated 14.07.2020 concluded that chances of fire emanating from this sources are far and few, in fact, remote.

15. In paragraph 9 of the aforesaid report dated 14.07.2020 the Surveyor has also referred to an opinion of an expert named

Mr.M.Thiagarajan, Managing Director of Alpha Image Private Limited, Bangalore, who is an expert in PCBs and has come to a conclusion that a source of ignition could be due to the short circuiting in the heating elements surrounding the Tin bath, inbuilt in the HASL machine and which cannot be seen in isolation.

16. In the said report, it has been further concluded as follows:-

> "***Hence, in our considered opinion, the cause of loss being of electrical origin having originated in the HASL Machine, the damage to HASL Machine is excluded and the damages caused to the Ducts and Scrubber, due to spread of fire, is tenable under the Policy. Also, the damages to operating media (Tin Bath, which were inside the machines), are also Excluded under exclusion of damages to stocks undergoing heating and drying process***"

17. The details of the assessed loss at Rs.29,05,339/- reads as under:-

Sl.No.	**Particulars**	**Initial Claim**	**Final Claim**	**Assessed Loss**
1.	Painting and civil works	Rs.4,45,482/-	Rs.4,39,274/-	Rs.4,32,968/-
2.	**Replacement of Lead**	**Rs.21,16,950/-**	**Rs.21,16,950/-**	**NIL**

	furnace			
3.	Repair of Tin Lead Machine	Rs.1,32,870/-	Rs.1,32,660/-	Rs.1,32,660/-
4.	Replacement of Scrubber	Rs.18,52,600/-	Rs.17,14,418/-	Rs.17,14,418/-
5.	**Replacement of Lead free metal**	**Rs.5,52,830/-**	**Rs.5,52,830/-**	**NIL**
6.	**Replacement of Tin Lead**	**Rs.3,71,405/-**	**Rs.3,71,405/-**	**NIL**
7.	Electrical and Instrumentation	Rs.6,73,786/-	Rs.6,25,293/-	Rss.6,25,293/-
8.	Gas refilling for fire extinguishers	Rs.10,915/-	Rs.9,250/-	NIL
		Rs.61,56,839/-	Rs.59,62,080/-	Rs.29,05,339/-

18. Thus, the Surveyor rejected the claim by holding that no matter from which source the fire has originated either from the wiring to the motor as stated by the respondent/claimant or due to the electrical short circuiting of heating elements both form an integral part of HASL Machine and cannot be seen in isolation as confirmed by the respondent in their e-mail dated 18.06.2020.

19. The scope of interference under Section 34 of the Arbitration and Conciliation Act, 1996 is limited. It is not similar to that of a Court of

Appeal entertaining a first appeal against Judgement and Decree of a Trial Court.

20. The Arbitral Tribunal is the ultimate fact finding authority. The conclusions arrived by the Tribunal particularly when the Tribunal consists of experienced Surveyor cannot be interfered unless it is concluded that the Award passed by the Arbitral Tribunal is based on no material evidence or is inspired from irrelevant evidence.

21. The award cannot be interfered with in the light of the decision of the Hon'ble Supreme Court in ***Ssangyong Engg. & Construction Co. Ltd. v. NHAI*, (2019) 15 SCC 131**

22. As far as conclusion on interpretation of Clause 7 of the General Exclusions Clause from the Standard Fire and Special Perils Policy (SFSPP) is concerned, unless the petitioner is able to demonstrate that there the conclusion arrived by the Arbitral Tribunal was impossible of being arrived at, there cannot be a challenge to an award passed by the

Arbitral Tribunal.

23. Even, if two possible views available and one of the view is taken by the Arbitral Tribunal, the scope for interference under Section 34 of the Arbitration and Conciliation Act, 1996 cannot be countenanced.

24. The Arbitral Tribunal consisted of three experienced Surveyors viz., a Preceding Arbitrator and two Co-Arbitrators. The Preceding Arbitrator and one of the Co-Arbitrator have accepted the claim of the respondent whereas the other Co-Arbitrator has given a dissenting opinion.

25. The majority opinion of the Arbitral Tribunal in the Impugned Award dated 15.10.2022 has accepted the Claim Statement of the respondent dated 23.07.2021 and thereby overruled the objection of the petitioner that the respondent was not entitled to claim compensation for the Hot Air Soldering Levelling Machine (hereinafter referred to as HASL machine) which was damaged due to a short circuit on 03.06.2019.

26. In my view, the Impugned Award does not call for any interference. Therefore, this Arbitration Original Petition filed against the Impugned Award dated 15.10.2022 accepting the claim of the respondent cannot be interfered. Thus, this Original Petition stands dismissed. No costs.

28.03.2024

Index : Yes/No
Neutral Citation : Yes/No
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C.SARAVANAN, J.

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Pre-delivery Order in
Arb.O.P.(Com.Div.)No.15 of 2023

28.03.2024