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

\+ OMP (ENF.) (COMM.) 107/2020, EX.APPL.(OS) 1062/2021, EX.APPL.(OS) 3809/2022, EX.APPL.(OS) 163/2023, EX.APPL.(OS) 208/2023, EX.APPL.(OS) 271/2023

M/S KHANNA PAPER MILLS LTD ..... Decree Holder

Through: Ms. Ritika Jhurani, Mr. Aashish K. Gupta, Ms. Prachi Anand, Advs.

versus

M/S THE NEW INDIA ASSURANCE CO LTD

..... Judgement Debtor

Through: Mr. Saurav Agrawal, Mr. Arjun Masters, Ms. Akshita Totla, Mr. Shivam Chaudhary, Mr. Aman Sahani, Mr. Rajat Chhabra, Advs.

CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

% **23.02.2024**

1. This is a petition seeking enforcement of the Award dated 02.01.2020 for release of a sum of Rs. 99,75,70,640/- along with interest at the rate of 11% per annum.

2. The judgment debtor challenged the Award dated 02.01.2020 by filing O.M.P. (COMM.) 496/2020 which was decided on 05.12.2022. As per the said judgment, claim No. 5 and 12 of the Award were set aside.

3. In this view of the matter, the decree-holder states that a sum of Rs. 34 crores is due and payable to the decree-holder. Rs. 17.14 crores has already been deposited by the judgment debtor.

4. The dispute is with regard to the remaining amount which is for

interest at the rate of 11% on each of the claim amounts from the date of filing of the arbitration claim till realisation of the amount.

5. In the present petition, this court passed an order dated 17.03.2023 which reads as under:

> "*1. The Court is informed that pursuant to the orders passed a sum of Rs.17.14 crores had been deposited by the respondent insurance company. According to Mr. Mehta, learned senior counsel appearing for the enforcement petitioner, the total amount payable in terms of the award would today exceed Rs.34 crores.*
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> *2. The bone of contention between the parties appears to stem from Claim XII which stood placed in the Statement of Claim as filed before the Arbitral Tribunal and the amounts which ultimately came to be awarded by it under that head.*
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> *3. As would be evident from para 153 of the Arbitral Award the claim as set forth in that regard reads as follows: -*
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> *"CLAIM XII*
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> *153. Claim XII was added by the Claimant by way of the Amended SOC and seeks additional interest at 2% above the prevailing Bank Rate in view of Section 9 of the IRDA Regulations, 2002. In the said Claim the Claimant has sought:*
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> > *a) interest at 11.5% on the amount released on 31.5.2013, i.e. on Rs.103,16,42,738/- for the period between 12.01.2013 (the date by which, as per the IRDA Regulations, the Claimant's claim had to have been decided and cleared by the Respondent) and 31.05.2013 (the date on which the admitted amounts were actually released; and*
> >
> > *b) interest at 11.5% on the final amount assessed as payable by this Tribunal from 12.01.2013 till the date of payment of the same."*
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> *4. The Award further indicates that reliance in respect of payment of interest was placed on the provisions contained in Regulation 9 of the IRDA (Protection of Policyholders' Interest) Regulations, 2002 [IRDA Regulations]. This clearly appears to come to the fore in terms of the reliance which was placed on Regulations 9(5) and 9(6) by the claimant.*

5. The Arbitral Tribunal after considering the submissions addressed on the aforesaid aspect, ultimately came to record the following findings: -

> "160. Thus from the above, it is apparent that the penal interest specified in Clause 9(6) of the Regulations is regularly being imposed upon insurance Companies for violations of the timelines prescribed in even Clause 9(5). In view of the above, the Claimant is entitled to part I of Claim XII, i.e. payment of penal interest under Clause 9(6) on the settled amount of Rs.1,03,16,42,738/- for the period between 12.01.2013 and 31.05.2013. 161. Further, Claimant is also entitled to interest @ 11% p.a. on each claim amount decided in its favour in the present proceedings, from the date of filing of the Arbitration Claim till realization of the amount."

6. It would further appear from the record that the aforesaid findings were directly assailed by the respondent insurance company in a petition under Section 34 of the Arbitration and Conciliation Act, 1996 [the Act] which came to be preferred. The Court while dealing with the Section 34 challenge on this score by its judgment dated 05 December 2022 held as follows:

> "120. Any finding of the learned Arbitral Tribunal which is contrary to the applicable contractual provisions cannot sustain, on the anvil of the law laid down in the decisions already cited in para 62 and 72 supra. Regulation 9(6) clearly applies only where there was delay of more than seven days between the acceptance of settlement and remittance of the amount to the insured. The learned Arbitral Tribunal has noted the fact that, in the present case, the terms of settlement had been accepted, by execution of the Joint Discharge Voucher on 29th May 2013, and the payment, in terms thereof, had been made to Khanna within a week thereof on 31st May 2013. Even so, the learned Arbitral Tribunal has nonetheless invoked Regulation 9(6) on the ground of delay, on NIA's part, in finalizing the survey report and in making the offer of settlement after submission of the survey report. 121. Neither of these considerations

constitutes a basis for charging higher penal interest under Regulation 9(6). The only ground on which higher penal interest can be charged under Regulation 9(6) is where there is a delay between the finalization of the terms of settlement and remittance of the amount thereunder to the insured, beyond the period of seven days therefrom. Admittedly, no such delay had occurred. Regulation 9(6) did not, therefore, apply. 122. It was completely impermissible, on the part of the learned Arbitral Tribunal, to conflate Regulations 9(5) and 9(6) and thereby incorporate, into Regulation 9(6), the provisions of Regulation 9(5). The two provisions operate in independent spheres. The learned Arbitral Tribunal has not even sought to hold, as a principle of law, that the two provisions could be conflated. Nonetheless, it has chosen to do so, only on the reasoning that Khanna could not be left remediless having been forced to sign the blank Joint Discharge Voucher."

7. While recording its conclusions it ultimately quashed the Award rendered in respect of Claim XII.

8. Mr. Mehta, learned senior counsel appearing for the enforcement petitioner, would contend that the Arbitral Tribunal had clearly awarded interest to it under two distinct heads with one flowing from Regulation 9 of the IRDA Regulations and the second clearly referable to prayer (b) which had sought the award of interest independent of those Regulations. According to Mr. Mehta it is the aforesaid relief as claimed which had been granted by the Tribunal. According to learned senior counsel the ultimate Award which had been rendered would also clearly indicate that the enforcement petitioner had been granted interest both with reference to Regulation 9(6) and independent thereof by the Arbitrator in terms of the specific recitals as appearing in paragraph 161.

9. Mr. Aggarwal, learned counsel appearing for the respondent on the other hand contends that as would be evident from the amendment application which was moved before the Arbitral Tribunal both reliefs (a) and (b) pertaining to Claim XII had been framed with reference to Regulation 9 of the IRDA Regulations. According to learned counsel in any case and since the Section 34

Court has in terms of its ultimate conclusions quashed and set aside the award in respect of Claim XII in toto, there exists no scope for the enforcement petitioner to contend that further amounts are payable in respect of Claim XII as awarded by the Tribunal.

10. At this stage Mr. Mehta, learned senior counsel sought for liberty to approach the appropriate court and take such further steps as may be permissible in law. The liberty as sought stands accorded.

11. Insofar as the amount already deposited by the respondent is concerned, the Court notes that the Section 34 petition came to be disposed of on 05 December 2022. Till date no further challenge has been laid by the respondent.

12. In view of the aforesaid the amount as deposited with this Court shall stand released in favour of the petitioner subject to due verification. The aforesaid release shall be duly securitized by way of a corporate guarantee to be submitted by the enforcement petitioner.

13. Let the matter be called again on 07.08.2023."

6. Pursuant to the said liberty, the decree holder filed an application seeking clarification in O.M.P.(COMM.) 496/2020 that the interest on each of the claims should be awarded to the decree-holder. The said application was rejected on the ground that there was no requirement for any clarification.

7. On 02.11.2023, this Court again adjudicated the issue raised by the learned counsel for the decree-holder and recorded as under:

"*1. It is the submission of the learned senior counsel for the petitioner they are not asking for the interest sought for in the prayer a of the claim no.XII but are praying for the interest pendente lite as was allowed by the learned arbitral tribunal under prayer b of claim XII and it was never disturbed by the Court under Section 34. However, the learned counsel for the respondent has referred to an order dated 17.03.2023 wherein also similar contentions were raised and wherein the learned counsel for the decree holder had sought a liberty to approach*

the appropriate Court and for taking such steps as applicable per law. Such liberty was granted.
2. Admittedly, the petition under Section 34 of Arbitration and Conciliation Act was disposed on 05.12.2022 i.e., prior to 17.03.2023, yet again the petitioner moved an application before the same Court and it rather dismissed the application of the petitioner on 07.08.2023 saying it does not call for any clarity. Thus, we stand on 17.03.2023.
3. Admittedly, the principle amount has since been released in favour of the petitioner and no clarification is sought by the petitioner in an appeal under Section 37 of Arbitration and Conciliation Act as of now. Any order to the contrary of 17.03.2023 would be a review of it.
4. In view above, list this petition on 23.02.2024. In the meanwhile the petitioner/decree holder is at liberty to seek appropriate remedy as per law."

8. Since the principal amount has already been released in favour of the decree holder and till today the order dated 17.03.2023 and 02.11.2023 has not been varied, modified or set aside, I am of the view that the issue with regard to the interest on claims from the date of filing of the arbitration claim till realisation of the amount has already been adjudicated upon and cannot be adjudicated again in the present petition.

9. Ms. Jhurani, learned counsel for the decree-holder states that she is already pursuing her petitions for amendment/clarifications/appeals.

10. For the said reasons, as of today, the present enforcement petition stands satisfied and is accordingly closed.

11. The decree holder is at liberty to revive the petition as and when the need so arises in accordance with law and/or file fresh execution petition.

FEBRUARY 23, 2024/DM **JASMEET SINGH, J**