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O.P.Nos.2 & 122 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 21.01.2025
Pronounced on : 17.02.2025

CORAM

THE HONOURABLE MR.JUSTICE P.B.BALAJI

O.P.Nos.2 & 122 of 2018
& A.No.2257 of 2022

O.P.Nos.2 of 2018:

M/s.Aurofood Private Limited,
Having its registered Office at
C.S.Towers, Flat No.2A,
3rd Floor, 34, Bazullah Road,
T.Nagar, Chennai – 600 017,
Also having Office at
TC Balam (Post)
Vanur Taluk, Villupuram District – 605 111.

... Petitioner

VS.

1.Oriental Insurance Company Limited,
Divisional Office No.II,
May Flower Building, 2nd Floor,
ATT Colony, Coimbatore – 641 018,
Rep. by its Senior Divisional Manager

2.The Oriental Insurance Company Limited,
Coimbatore Region,
No.72, Balasundaram Road,
ATT Colony, Coimbatore – 641 018
Rep. by its Chief Regional Manager

... Respondents



PRAYER: Arbitration Original Petition filed under Sections 34 of the Arbitration and Conciliation Act, 1996, set aside the Majority Award rendered by the Arbitral Panel by confirming the Dissenting Award rendered by Mr.N.Veeraraghavan dated 25.08.2017 in place of the Majority Award dated 20.08.2017 rendered by Mr.R.M.Mayileru and Mr.R.L.Asawa in respect of Issues 4, 5, 6 and 9 as well as the quantum of compensation awarded in respect of Claims under Items 1 and 2 under Policy No.344 and Item No.5 under Policy No.343 along with the interest on such amounts and the costs, as the award binding on the parties.

For Petitioner : Mr.T.K.Bhaskar

For Respondents : Mr.N.Venkatraman
for M/s.Nageswaran & Narichania
Law Firm

O.P.Nos.122 of 2018:

1.Oriental Insurance Company Limited,
Divisional Office No.II,
May Flower Building, 2nd Floor,
ATT Colony, Coimbatore – 641 018,
Rep. by its Senior Divisional Manager

2.The Oriental Insurance Company Limited,
Coimbatore Region,
No.72, Balasundaram Road,
ATT Colony, Coimbatore – 641 018
Rep. by its Chief Regional Manager

... Petitioners



O.P.Nos.2 & 122 of 2018

VS.

1.M/s.Auro Food Private Limited,
T.C.Balam (Post) – 605 111,
Pondicherry.

2.N.Veeraraghavan

3.RM.Mayileru

4.R.L.Asawa

... Respondents

PRAYER: Arbitration Original Petition filed under Sections 34 of the Arbitration and Conciliation Act, 1996, set aside the arbitral award dated 20.08.2017 and dissenting award dated 25.08.2017 passed by the 3rd and 4th respondents.

For Petitioners : Mr.N.Venkatraman
for M/s.Nageswaran & Narichania
Law Firm

For Respondents : Mr.T.K.Bhaskar

COMMON ORDER

Both these Original Petitions have been filed under Section 34 of the Arbitration and Conciliation Act, 1996, challenging the award of the Arbitral Tribunal dated 20.08.2017.



2.The principal challenge to the award is by the Insurance Company in O.P.No.122 of 2018, whereas the claimant, aggrieved by the quantum of compensation awarded by the Majority Tribunal, seeking to confirm the dissenting award, has filed O.P.No.2 of 2018.

3.The parties are described as per their litigating status in O.P.No.122 of 2018.

4.I have heard Mr.N.Venkatraman, learned counsel appearing for the petitioner in O.P.No.122 of 2018 and respondent in O.P.No.2 of 2018 and Mr.T.K.Bhaskar, learned counsel appearing for the petitioner in O.P.No.2 of 2018 and respondent in O.P.No.122 of 2018. I have also gone through the impugned award as well as the documents which have been placed before the Arbitral Tribunal and now before me by way of typed set of papers.

5.Mr.Nageswaran, learned counsel appearing for the petitioner would categorize his submissions into three main grounds, namely the award has violated the provisions of Food Safety and Standard Act, 2006 and therefore, it is opposed to public policy; the Tribunal, having found that the



policy did not have a reinstatement clause, erred in proceeding to find that the claimant was entitled to payment under the reinstatement clause and therefore, it is contrary to the terms and conditions of the contract, hit by Section 28(3) of the Arbitration and Conciliation Act, 1996 and the Tribunal has ignored the scope of coverage of the place under the policy while answering the issue pertaining to the alleged losses suffered by the claimant.

6.The learned counsel for the petitioner would elaborate his submissions based on the above three broad grounds. He would take me through the provisions of the Food Safety and Standard Act, 2006, especially Sections 26(5), 27(1), 27(2)(b)(c)(e)(f) and 27(3)(b). The Tribunal, by framing a specific issue as to whether the Godown D is a warehouse which has been used for storing stock as contemplated by the claimant or whether it was a dump yard as claimed by the Insurance Company based on the Surveyor's report, held that a Godown would normally be secured in all respects with proper doors and windows.

7.According to the learned counsel for the petitioner, admittedly, the Godown did not even have a front door for more than one year, after the



closure of the wafer plant which was admitted by even C.W.1 during cross-examination. He would therefore submit that when the evidence on record clearly demonstrated that the Godown was not fit to store stocks such as Maida, etc., and there was not even a possibility of proper stocking, leave alone accessing the stock from inside the Godown, the Tribunal ought to have held that the Godown D was nothing but a mere dump yard and cannot qualify itself to be a warehouse.

8.The learned counsel for the petitioner would further invite my attention to the various provisions of the Food Safety and Standard Act, 2006 as well as the Food Safety and Standard Rules and contend that when there is a gross violation of the various provisions of the enactment which are specifically intended for maintaining the purity of the raw material and to keep the products free from any dirt, insects, etc., the unhygienic condition in which the Godown had been maintained, which has come out in evidence as well ought to have weighed in the mind of the Tribunal and consequently, the Tribunal should have negated the claim for the losses suffered.



9.The learned counsel for the petitioner would also place reliance on the report of the Surveyor which has been marked as Ex.C8, in support of the above contentions. Further, the learned counsel for the petitioner would also submit that the claimant has not been able to rebut the Surveyor's report by leading satisfactory evidence in order to dislodge the Surveyor's report. The learned counsel for the petitioner would further contend that when the Tribunal had noticed the report of the Surveyor and the clear findings that it was left uncared for, ought not to have concluded that the Godown D was sound and that it also contained rejected stocks stored, prior to the date of losses. Assailing the findings of the Tribunal, the learned counsel for the petitioner would submit that the findings are clearly against the various provisions of the Food Safety and Standard Act.

10.With regard to the reinstatement clause, the argument of the learned counsel for the petitioner is that admittedly, the contract did not provide for reinstatement clause and therefore, ought to have held that the Surveyor had rightly applied depreciation in terms of the coverage and conditions in the policy, without traveling beyond the scope of the terms of the contract to apply the RIV clause and reject the Surveyor's report in this



regard. The learned counsel for the petitioner would further submit that though the Tribunal has held that the petitioner ought to have included the RIV clause by making necessary endorsement, immediately upon receipt of such a request from insurer, failed to see that at the request of the respondent themselves, other endorsements were made in the policy. In this regard, the learned counsel for the petitioner would refer to annexure C32, pointing out that the RIV clause was never included by way of amendment of the original policy. Therefore, the Tribunal deciding the basis of assessment under the RIV clause, according to the learned counsel for the petitioner, is even beyond the scope of arbitration. In this regard, he would take me through the dispute resolution clause in the contract under which the parties have agreed that disputes regarding quantum alone can be decided by way of arbitration.

11. With regard to the third head of challenge, the learned counsel for the petitioner would submit that the Tribunal has not found the entitlement of the claimant under the coverage of the place under the policy, while adjudicating the disputes with regard to the losses suffered by the respondent claimant. In this regard, the learned counsel for the petitioner



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would take me through the two insurance policies under which the respondent has made a claim, namely Policy No.451200/11/2011/343 pertaining to flour mills and Policy No.451200/11/2011/244 pertaining to pasta plant/factories.

12.Referring to these two policies, more specifically the schedules, the learned counsel for the petitioner would submit that the description of risk covered in the particular location under both the policies are the mills/factories and the items covered within the insured premises, he would therefore contend that the insured premises would only mean the mill premises and the factory premises, which are admittedly situated in different locations in the premises of the respondent. He would therefore submit that without finding that the coverage of the Godown under the policies, in the light of the specific contention of the petitioner that it is a dump yard, the Tribunal ought not to have awarded the claims in favour of the respondent.

13.The learned counsel for the petitioner would place reliance on the following decisions:

1.Emkay Global Financial Services Limited Vs. Giridhar Sondhi ((2018) 9 SCC 49).



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2.Canara Nidhi Limited Vs. M.Shashikala and Others ((2019) SCC Online SC 1244).

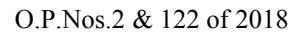
3.McDermott International Inc. Vs. Burn Standard Company Limited and Others ((2006) 11 SCC 181).

4.Associate Builders Vs. Delhi Development Authority ((2015) 3 SCC 49).

5.PSA SICAL Terminals (P) Limited Vs. Board of Trustees of V.O.Chidambaranar Port Trust Tuticorin (2021 SCC Online SC 508).

14.In response to the original petition filed by the respondent/claimant, the learned counsel for the petitioner would fairly submit that in the event of this Court upholding the award, then in all fairness, the disallowed claims which are now sought for by the claimant would have to be entertained. He would therefore pray for O.P.No.122 of 2018 being allowed and O.P.No.02 of 2018 being dismissed.

15.Per contra, Mr.T.K.Bhaskar, learned counsel for the respondent/claimant in O.P.No.122 of 2018 and petitioner in O.P.No.2 of 2018 would submit that the law is well settled by the Hon'ble Apex Court as well as several decisions of this Court that the Arbitrator is the best Judge of the evidence adduced by the parties and even an erroneous finding or incorrect appreciation of evidence cannot be interfered with, as long as the



16. With regard to the contention of the learned counsel for the petitioner that the Arbitrator has wandered beyond the scope of reference, the learned counsel for the respondent would submit that the claims made were clearly within the ken of the arbitration agreement and therefore, the Tribunal has rightly proceeded to decide the same and in such circumstances, it cannot be said that the Tribunal has exceeded the scope of reference.

17. With regard to the RIV clause, the learned counsel for the respondent would submit that the Tribunal has elaborately discussed the non-inclusion of the RIV clause in the contract and rightly came to the conclusion that the RIV clause ought to have been included by the petitioner



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by way of an endorsement, immediately after receipt of such request from the respondent/claimant. The learned counsel for the respondent would further submit that having received the higher premium to provide coverage as per the RIV clause, mere failure to include the same as part of the policy by making necessary endorsement would not be fatal, more so, when the Tribunal has discussed the evidence and adverted its attention to the correspondence exchanged between the parties and came to the conclusion that the RIV clause would be applicable, this Court exercising jurisdiction under Section 34 cannot sit on appeal over the factual finding arrived at by the Tribunal and set aside the award.

18. With regard to the award being in conflict with the public policy of India for violation of the provisions of the Food Safety and Standard Act, 2006, the learned counsel for the respondent would submit that firstly this ground was neither raised before the Tribunal nor before this Court in the grounds of the original petition. In any event, he would submit that the reliance now placed on the various provisions of the said enactment are not only irrelevant but also misplaced since the findings of the Surveyor have been rejected by the Tribunal on available evidence.



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19.As regards the argument that the Tribunal has not found coverage of the place under the policy, the learned counsel for the respondent would submit that the Tribunal, considering the oral and documentary evidence, treated the Godown D as insured under the policies, rejecting the Surveyor's report on the ground that it was not based on any scientific testing of the stock but merely on physical observations. Therefore, the learned counsel for the respondent would submit that such factual findings are not liable to be tinkered with under Section 34 of the Act.

20.In respect of his contentions, the learned counsel for the respondent would place reliance on the following decisions:

1.SSangyong Engineering and Construction Company Limited Vs. National Highways Authority of India ((2019) 15 SCC 131).

2.State of Goa Vs. Praveen Enterprises ((2012) 12 SCC 581).

3.Canara Nidhi Limited Vs. M.Shashikala and Others (2019 SCC Online SC 1244).

4.Emkay Global Financial Services Limited Vs. Giridhar Sondhi ((2018) 9 SCC 490.

5.McDermott International Inc. Vs. Burn Standard Company Limited and Others ((2006) 11 SCC 181).

6.M/s.Harsha Constructions Vs. Union of India (AIR 2015 SC 270).



7.Associate Builders Vs. Delhi Development Authority ((2015) 3 SCC 49).

8.PSA SICAL Terminals (P) Limited Vs. Board of Trustees of V.O.Chidambaranar Port Trust Tuticorin (2021 SCC Online SC 508).

9.Malay Kumar Ganguly Vs. Dr.Sukumar Mukherjee ((2009) 9 SCC 221).

10.Parsa Kente Collieries Limited Vs. Rajasthan Rajya Vidyut Utpadam Nigam Limited ((2019) 7 SCC 236).

11.Superintending Engineer, National Highways Vs. Gowpatt Associates ((2019) 3 MLJ 878).

12.State of Chattisgarh and Another Vs. Sal Udyog Private Limited ((2022) 2 SCC 275).

21.With regard to the challenge to the award, at the end of the claimant in O.P.No.2 of 2018, the learned counsel for the respondent would submit that the award is challenged only in respect of the quantum of compensation awarded under items 1 and 2 of Policy No.451200/11/2011/343 and item 5 of Policy No.451200/11/2011/244, along with interests and costs. The learned counsel for the respondent would place reliance on the findings of the minority award where the impugned portions of the majority award are clearly shown to suffer from patent illegality. According to the learned counsel for the respondent, the findings in the majority award are not only irrational but also with a view that can not possibly or plausibly be taken by a person of reasonable mind.



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22. According to the learned counsel for the respondent, the issues Nos.4, 5, 6 and 9 under which quantum of compensation has been awarded to the respondent, especially the majority award has not been taken into consideration the process of survey adopted by the petitioner which is in total contravention of the Insurance Surveyors and Loss Assessors (Licensing, Professional Requirements and Code of Conduct) Regulations, 2000 and Circular No.IRDA/SLA/1/2001 dated 11.09.2001, besides vital evidence available before the Tribunal also being ignored.

23. In order to fortify the above argument, the learned counsel for the respondent would submit that the very appointment of the Surveyor was in gross violation and contravention of the Insurance Surveyors and Loss Assessors (Licensing, Professional Requirements and Code of Conduct) Regulations, 2000 and Circular No.IRDA/SLA/1/2001 dated 11.09.2001. According to the petitioner, under the rules and regulations, a C-Grade Surveyor can be appointed to assess the losses only up to Rs.5,00,000/- and in the facts of the present case, an Grade-A Surveyor ought to have been appointed. He would also take me through the Surveyor's report in Ex.C7



award are patently illegal for basing the loss merely on 2,02,000 kgs of Maida and Duram Ceroti instead of 4,48,405 kgs. The learned counsel for the respondent would also take me through the various other claims which have been dealt with in issue Nos. 4, 5, 6 and 9, where there is minor difference in awarding the compensation by way of damages.

26.The learned counsel for the respondent would place reliance on the following decisions as well:

- 1.Patel Engineering Limited Vs. North Eastern Power Corporation Limited ((2020) 7 SCC 1670.*
- 2.Dyna Technologies Vs. Crompton Greaves (2019 SCC Online 1656).*
- 3.Sumant Sud Vs. IRDA (2015 SCC Online P & H 448).*
- 4.SSangyong Engineering and Construction Company Limited Vs. National Highways Authority of India ((2019) 15 SCC 131).*
- 5.Amex Impex Electricals Private Limited Vs. New Delhi Municipal Corporation (MANU/DE/0554/2020).*
- 6.Sahara Hospitality Limited Vs. Hotel Corporation of India (LAWS (BOM)-2015-5-11).*
- 7.M/s.3i Infotech Limited Vs. Tamil Nadu e-Government Agency & Others (2019 SCC Online Mad 33295).*
- 8.R.S.Jiwani Vs. Ircon International ((2009) SCC Online BOM 2021).*
- 9.ONGC Vs. Interocean Shipping (India) (P) Limited (2017 SCC Online Bom 10032).*
- 10.Modi Entertainment (P) Limited Vs. Prasara*



Bharati ((2017) 163 DRJ 291).

11.M/s.J.K.Fenner Vs. NLC ((2020) SCC Online Mad 1017).

12.Dakshin Haryana Bijli Vitran Nigan Limited Vs. Navigant Technologies Private Limited ((2021)7 SCC 657).

13.J.G.Engineers Private Limited Vs. Union of India & Others ((2011) 5 SCC 758).

14.M/s.Qualtech Engineers Private Limited Vs. M/s.MR Ommayal Achi MR Arunachalam Trust, OSA (CAD) No.119 of 2021.

15.Padma Sundara Rao and Others Vs. State of Tamil Nadu and Others ((2002) 3 SCC 533).

27.I have carefully considered the arguments advanced by the learned counsel on either side. I have also perused the records placed before me, including the decisions on which reliance is placed on by the learned counsel on either side.

28.In view of the fairness exhibited by the learned counsel for the petitioner that in the event of my disagreeing with the grounds of challenge raised by the petitioner/Insurance Company, then as a natural corollary and consequence, the challenge of the respondent/claimant would have to be entertained. My discussion would therefore primarily revolve around the challenge to the award by the Insurance Company in O.P.No.122 of 2018.



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Consequent upon the findings that I render herein below, the fate of O.P.No.2 of 2018 would be automatically decided as well.

29. With regard to the first head of challenge to the award namely, the findings of the Tribunal on issue No.9 regarding the Godown D being a warehouse or a mere dump yard, the bone of contention advanced by the learned counsel for the petitioner is that from the available evidences not only the Surveyor's report but also the oral evidence of C.W.1, the petitioner has been able to demonstrate that the Godown did not satisfy the requirements of the Food Safety and Standard Act, 2006 and in such circumstances, the Tribunal ought not to have held that the Godown D cannot qualify as a Godown/warehouse for stocking goods, but it was only a dump yard for rejected and waste products.

30. Firstly, as rightly contended by the learned counsel for the respondent, there is no specific defence raised by the petitioner Insurer that there was a violation of the Food Safety and Standard Act, 2006, I do not find any such specific grounds having been taken neither before the Tribunal nor before this Court. Nevertheless, in my considered view, if at all



there are any violations of the various provisions that have been highlighted by the learned counsel for the petitioner, it is a matter for the authorities functioning under the Act to initiate such action that may be permissible as against the respondent. Admittedly, it is not the case of the petitioner that for violation of the statutory provisions of the Act, the authority concerned had already initiated action against the respondent/Company. There is absolutely no evidence brought on record by the petitioner in this regard. That being the position, without taking such a plea even before the Tribunal, it is not open to the petitioner to challenge the award on this ground. In any event, I am going to discuss the findings of the Tribunal with regard to the shortcomings of the warehouse/Godown and whether the insurer would be bound to cover the said Godown as well.

31.No doubt, the Surveyor who has visited the site has given a report finding that there are several deficiencies. While discussing issue No.9, the Tribunal has taken note of the admission of C.W.1, the report of the Surveyor and yet came to the finding that the Godown D had both sound as well as rejected stock stored inside it, prior to the date of loss. Much is made of the said finding of the Tribunal by the learned counsel for the petitioner.



Though the Tribunal has not given any elaborate reasons for such a finding, when the Tribunal was conscious of the report of the Surveyor and his findings regarding the unhygienic condition in which the Godown was maintained or rather not maintained and there being no proper measures for stocking the products, when the panel has arrived at a factual finding stating that it was after detail study that the Godown has been held to be containing both sound as well as rejected stocks prior to the date of loss, the said factual finding cannot be easily upset by this Court exercising jurisdiction under Section 34 of the Act. Though the Tribunal has not discussed this issue No.9 elaborately, however I find that while discussing the issue No.4 as well as 5, the Tribunal has clearly appreciated the evidence and found that Godown D had both stocks sound stocks as well as rejected stocks. Therefore, the findings in the Issue No.9 cannot be read in isolation

32.The Tribunal is not a Court and therefore, the manner in which the Tribunal discusses the claim and defence and arrives at findings cannot be expected to be in a regulated manner as Courts normally do. As long as it can be ascertained from the award that the Tribunal has considered the evidence and arrived at a possible finding, then mere fact that the Tribunal



has not elaborately discussed the evidence in a particular fashion cannot be a ground to challenge the award. The parties have exercised their autonomy in choosing the Tribunal knowing the competence of the Arbitrators and in such circumstances, merely because the award does not elaborately discuss the evidence on each and every aspect, cannot give rise to a ground to challenge the award itself. More so, the Tribunal cannot be said to have ignored vital evidence since the Tribunal has also highlighted the various negative factors with regard to the condition of the Godown before rendering a finding.

33. Even with regard to the RIV clause, the specific case of even the respondent is that the contract did not include an endorsement regarding incorporation of the RIV clause. However, according to the learned counsel for the respondent, the respondent has chosen to pay higher premium only for inclusion of the RIV clause and for the fault of the petitioner in not making necessary endorsements, it cannot be put against the respondent to deny the benefits of computation of the loss in terms of the RIV clause. In this regard, annexure C32 is pressed into service by both the counsel.



34.Firstly, the respondent/claimant, in and by an e-mail to the petitioner on 01.07.2011, has clearly requested for attachment of the RIV clause. This request implies that the respondent has already paid the higher premium and therefore, the petitioner was obligated to include the RIV clause. The said communication does not disclose an intention on the part of the respondent to opt for the RIV clause by making necessary payment for the same. On the other hand, it is only an e-mail requesting the clause to be attached to the policy conditions. Further, I also do not find that there is any suggestion put to C.W.1 that the respondent has not paid the requisite premium for the RIV clause to be incorporated and therefore, the RIV endorsement was not made. The parties have proceeded on the understanding that the higher premium for RIV clause has been paid but yet the RIV clause did not find its way to the policy by way of an amendment or endorsement. In this regard, the Tribunal has clearly held that though the policy did not contain the RIV clause, however, the exchange of correspondence between the parties clearly indicated that the petitioner ought to have included the RIV clause, at least after a request from the respondent/claimant and therefore, the respondent was entitled to have its loss assessed only on RIV clause.



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35. Though the learned counsel for the petitioner would submit that this is in violation of the terms of the contract and the Tribunal has wandered outside the contract terms, I am unable to countenance the said argument of the learned counsel for the petitioner. This issue was specifically raised by the petitioner before the Tribunal and the Tribunal has rendered a factual finding that the petitioner was at fault for not including the RIV clause in the policy. Though the learned counsel for the petitioner invited my attention to the contradictory portions of the award in this regard at paragraph Nos.3 and 5 while dealing with the issue No.9, on a careful reading of the said portions of the award, I do not find any contradiction at all as contended by the learned counsel for the petitioner. At paragraph No.3, the Tribunal submits that the Tribunal only finds that the Surveyor cannot be found fault with for applying depreciation since there was no RIV clause in the policy and the Surveyor cannot infer the existence of the RIV clause unilaterally, as he was bound by the coverage as well as conditions in the policy. However, at paragraph No.5 of issue No.11, the Tribunal independently comes to the finding that the petitioner was bound to include the RIV clause and mere non-omission of the same would not be fatal to



assess the loss on RIV basis. Therefore, the contention of the learned counsel for the respondent is that the Tribunal has blown hot and cold is incorrect and cannot be sustained.

36. With regard to the argument of the learned counsel for the petitioner that the interpretation of the terms of the contract was not amenable to arbitration since the arbitration clause in the contract was only pertaining to loss and therefore, the award suffers from patent illegality for clearly exceeding scope of reference is concerned, I do not find any merit in the said argument advanced by the learned counsel for the petitioner. No doubt, the parties have agreed upon a specific arbitration agreement in the contract which permits the disputes pertaining to losses alone being referred to arbitration for adjudication.

37. The argument of the learned counsel for the petitioner is that when the parties had narrowed down the scope of reference to arbitration, Tribunal could not have discussed the inclusion and non-inclusion of the RIV clause itself. Though the said argument appears to be attractive on the face of it, on going through the claims made by the respondent and reading



it in line with the arbitration agreement, I find that the claim based on application of loss assessment by adopting RIV clause is nothing else but ultimately boiling down to the quantum of loss claimed by the respondent. Therefore, it cannot be said that the Tribunal erred in interpreting the terms of contract and consequently applying RIV clause. The Tribunal has only arrived at the loss suffered by the claimant in terms of the claims made and in such process, the Tribunal has incidentally discussed the RIV clause and its impact. It was only the means to the end, namely the ascertainment of the losses of the claimant.

38.As rightly held by the Hon'ble Supreme Court in *Ssangyong Engineering and Construction Company Limited Vs. National Highways Authority of India*, reported in (2019) 15 SCC 131 as well as *State of Goa Vs. Praveen Enterprises*, reported in (2012) 12 SCC 581, I find that the claim is clearly within the ken of the arbitration agreement submitted to arbitration and it cannot be said that the discussion regarding the RIV clause was never contemplated and that it fell outside the arbitration agreement. The reference and discussion to the RIV clause, its inclusion and non-inclusion are directly connected with the matter in issue and therefore, cannot be held to be beyond the scope of submission to arbitration.



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39. With regard to the award being opposed to public policy, the thrust of the argument of the learned counsel for the petitioner is that the provisions of the Food Safety and Standard Act, 2006 have been clearly shown to have been violated and despite the same, the Tribunal has proceeded to award damages which is opposed to the statutory enactment. Though the learned counsel for the petitioner would take me through the specific references to the provisions of the Food Safety and Standard Act and its Rules in various portions of the award, I clearly find that all such references have been made in entirely different context and not on the ground that the claims had to be denied as the petitioner had violated the provisions of the said enactment. Therefore, I am unable to see that the award has breached any fundamental principles of justice or law or legislation warranting interference on the ground that it is opposed to public policy of Indian law, especially when such contentions were not even specifically taken by the Arbitral Tribunal.

40. With regard to the place of Godown, the claim of the petitioner is that for Godown D additional premium has not been paid and therefore, the



policy could not have covered Godown D. The Tribunal has elaborately discussed this contention of the petitioner and rendered a finding that the policies do not specify the names of Godowns which fall within their cover and in the absence of books of accounts being produced to determine the scope of power, Godown D cannot be separately designated to contend that it was outside the coverage of the policy. The Tribunal has arrived at this factual finding based on available evidence on record and I see no scope for interfering with this possible and plausible view taken by the Tribunal. Further, once the Tribunal arrived at the finding that the Godown D was also to be covered under the policy, I do not find any merit in the argument of the learned counsel for the petitioner that there is no finding with regard to place of coverage.

41.The Hon'ble Supreme Court in *Superintending Engineer, National Highways Vs. Gowpatt Associates*, reported in (2019) 3 MLJ 878, has held that when the award of the Tribunal exhibits a possible view based on the materials placed before the Tribunal and there is no perversity or impossible view that no fair minded person would have arrived at, or a view that shocks the conscience of the Court, then the award is not amenable to challenge under any of the heads of Section 34 of the Act.



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42. Having discussed in detail, the findings arrived at by the Tribunal herein above, I do not find any illegal or perverse findings or findings arrived at without evidence or the Tribunal ignoring vital and material evidence warranting interference under Section 34 of the Act. Further, the award has taken a very possible and reasonable view which does not in any manner, shock to the conscience of the Court. Therefore, for all the above reasons, I do not find any of the grounds raised in the Section 34 petition filed by the petitioner in O.P.No.122 of 2018 warranting interference of the award.

43. Coming to O.P.No.2 of 2018, as already discussed herein above, the learned counsel for the petitioner has fairly submitted that in the event of the challenge to the award being unsuccessful in O.P.No.122 of 2018, then the claimant would have to be held to be entitled to the disallowed claims, that too, by the majority award since the minority award has granted even the disallowed claims.

44. Despite the fairness exhibited by the learned counsel for the petitioner, I am bound to see whether such exercise of allowing or



entertaining the challenge in O.P.No.2 of 2018 would be permissible under Section 34 of the Act and conscious of the fact that the Hon'ble Supreme Court in *Project Director, NHAI Vs. M.Hakeem (batch of appeals)*, reported in 2021 SCC Online SC 473, has laid down the ratio that this Court, exercising power under Section 34, cannot modify the award. I am also aware that the Larger Bench is addressing the issue as to whether the award can be modified under Section 34 and whether the decision in *Hakeem's case* lays down the correct proposition of law. Nevertheless, as on date, the ratio laid down by the Hon'ble Supreme Court in *Hakeem's case* is binding on this Court. Conscious of this fact, I find that when the claims are severable and some of the claims that have been negated warrant interference and are liable to be set aside, if it may not strictly fall within the ambit of modification of the award.

45.In this regard, the decision of this Court in *M/s.3i Infotech Limited Vs. Tamil Nadu e-Government Agency & Others*, reported in 2019 SCC Online Mad 33295, delivered on 07.11.2019, is relevant to the facts of the present case. This Court held that when the arbitral award is severable, then in order to do justice, it would not be improper or impermissible to modify



the award. Similar view has also taken by the High Court of Bombay in *R.S.Jiwani Vs. Ircon International*, reported in (2009) SCC Online BOM 2021.

46.This Court in *M/s.J.K.Fenner Vs. NLC*, reported in (2020) SCC Online Mad 1017, delivered on 20.05.2020, also justified modification of the award on the ground that the evidence was not being re-appreciated by the Court sitting on appeal over the award.

47.The majority award has totally ignored the vital admission of the Surveyor which is also backed by even the video recording to show that a specified quantity of goods were destroyed by the Surveyor himself. When such quantity was assessed, the award ought to have included the said quantity which has been destroyed as well. However, the Majority award has excluded the said quantity. However, the minority award has rightly held that the quantum of compensation awarded should include such quantities that were destroyed and as a consequence, the freight charges of such quantity is also payable to the claimant. Therefore, there being no modification of the award in its strict sense, the respondent is entitled to the disallowed claims.



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48.Thus, for all the above reasons, I am inclined to entertain the challenge in O.P.No.2 of 2018 and consequently allow O.P.No.2 of 2018 to the extent prayed for therein.

49.In fine, O.P.No.2 of 2018 is allowed as prayed for and O.P.No.122 of 2018 is dismissed. However, there shall be no order as to costs. Connected application is closed.

17.02.2025

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