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

\+ O.M.P. (COMM) 374/2023 & I.A. 17850/2023, I.A. 17851/2023, I.A. 35138/2024

NATIONAL INSURANCE COMPANY LTD .....Petitioner

Through: Mr. Attin Shankar Rastogi, Advocate.

versus

BRIJBASI ART PRESS LTD .....Respondent

Through: Mr. Mrinal Ojha and Ms. Utsha Dasgupta, Advocates.

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

% **18.03.2025**

1. The Petitioner has approached this Court under Section 34 of the Arbitration & Conciliation Act challenging an Award dated 20.03.2023 passed by the learned Sole Arbitrator.

2. The arbitration involves a dispute that has arisen between the parties in respect of a fire accident that took place on 11.03.2019. The claims arise under the insurance policy taken by the Respondent from the Petitioner.

3. The facts of the case reveal that there are two policies, i.e., Policy No. 351600111810000056 for a period of one year from 23.05.2018 to 22.05.2019 for the plant & machinery and stocks. The sum insured in the first policy was Rs.37 crore and second policy being Policy No. 351600111810000043 was for a period of one year from 22.04.2018 to 21.04.2019 for the building and furniture, fixtures and fittings and the sum insured was Rs.6,96,10,000/-.

4. A fire broke out on 11.03.2019 causing damage to the plant & machinery of the Respondent. The Surveyor assessed the net loss of at Rs.18,40,48,386/-.

5. It is stated that the insurance company offered the amount which was accepted by the Respondent. However, dissatisfied by the amount offered by the Petitioner, the Respondent invoked the arbitration clause by issuing Notice under Section 21 of the Arbitration Act. Arbitration proceedings were initiated and Arbitral Tribunal was constituted. The Tribunal framed the following issues:-

> *"Issue 1: Whether the Claimant has received Rs.18,25,75,842/- in full accord and satisfaction of its claim. If so. It's effect?*
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> *Issue 2: Whether in view of the consent letter dated: 01-10-2020, the claim petition is barred by the principle of Estoppel?*
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> *Issue 3: Whether there is any cause of action favour of the Claimant and against the Respondent?*
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> *Issue 4: What the Claimant is entitled for the relief claimed under Claim Petition? If so, to what extent?*
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> *Issue 5: Whether the exercise of issuing a corrigendum to the FSR by the Surveyor after over 200 days (From the submission of the FSR) is in clear violation of the Protection of the Policyholder's Interests Regulation and, if so, whether the said corrigendum is null and void and non-est?*
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> *Issue 6: Whether the Surveyor was correct in changing the basis for computing the loss to certain Plant & Machinery of the Claimant and thereby reducing the assessed loss by INR 52 Lakhs in the corrigendum?*

Issue 7: Whether the Surveyor was correct in adding the freight charges @ 1.66% and import expenses @ 5.09% only to the value of the saved stocks and not adding the same to the value of the damaged stocks, while assessing loss caused to the Claimant's stock?

Issue 8: Whether the Surveyor was correct in considering the gross profit ration of 19.64% (based on the average gross profit of the preceding three years) to arrive at the value of the closing stock as on 10-03-2019?

Issue 9: Whether the Respondent was correct in unilaterally deducting INR 13.10 Lakhs on account of alleged breach of warranty under Policy No.- 35160011181000043?

Issue 10: Whether the Claimant is entitled to the claims made in the Arbitration?

Issue 11: Whether the Claimant is entitled to any interest, if so, at what rate?

Issue 12: Whether the Claimant is entitled to the cost incurred in pursuing the Arbitration?"

6. After examining the case, the learned Arbitrator came to the conclusion that apart from the amount of Rs.18,25,75,842/-, the Respondent is entitled to an additional amount of Rs. 64,66,311/-. The Respondent also claimed simple interest on Rs.64,66,311/- @ 9% (for full 1124 days) for the delay in payment, which comes to Rs.18,17,033/- and the Arbitrator has also held that the Claimant would be entitled to interest on Rs.14,58,89,484/- @ 9% (for 303 days) which comes to Rs.1,10,51,128/-.

7. The Petitioner has challenged the award by filing the instant petition.

This Court on 16.10.2023 had directed the learned Counsel for the Petitioner to take instructions as to whether the Respondent can be permitted to withdraw a sum of Rs.64,66,311/- along with interest @ 9% per annum accured on the said amount between 18.01.2020 to 20.03.2023.

8. On 18.10.2024, learned Counsel for the Petitioner had stated that he has instructions that an amount of Rs.64,66,311/- along with interest @ 9% per annum accrued on the said amount between 18.01.2020 and 20.03.2023 which comes to Rs. 18,17,033/- will be released to the Respondent.

9. It is stated that the amount of Rs.64,66,311/- + Rs. 18,17,033/- has been released to the Respondent on 20.12.2024.

10. The only question that is left for consideration is regarding payment of interest on Rs.14,58,89,484/- @ 9% per annum from 18.01.2020 to 16.11.2020.

11. The short submission made by the learned Counsel for the Petitioner is that the award does not indicate as to how the learned Arbitrator landed on the figure of Rs.14,58,89,484/-. The issue regarding interest has been discussed by the learned Arbitrator in the following manner:-

> *"Issue 11: Whether the Claimant is entitled to any interest, if so, at what rate?*
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> *It is the view of this Sole Arbitrator that there is no validity and merit in the claim of the Claimant and the relief sought for.*
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> *A. The claimants has claimed interest on 18,25,75,842/- for the purported delay in payment after receipt of survey report dated 13.12.2019. I do not find any rational for this claim. In context of the circumstances of the claim where insured was unable to provide any conclusive basis for determining its*

market value & /or replacement cost in respect of plant and machinery claim the delay in finalization of claim can't be attributed solely to the Insurer. The Insurer has also the duty and obligation to ensure that insured receives correct indemnity. There was no replacement of the damaged machines. The details of the new model and its configuration are riot available and as such, working out the payable loss for just &fair indemnity by the Surveyor. The responsibility of substantiating the quantum of compensation claimed lies on the Insured and if he fails to do that, the surveyor &/ or Insurer cannot be hold solely responsible for the same. In absence of conclusive evidence of the replacement cost of plant & machinery, the assessment as worked out by the Surveyor had to be closely examined and the Insurers reservations on the methodology adopted by the Surveyor were not entirely misplaced. The delay at the Insurers end was largely due to delay in receipt of clarifications by the Surveyor.

In the circumstances as stated above, I am able to accept the demand of interest on delayed payment of claim amount pertaining to stocks and buildings which is Rs. 14,58,99,484/- already received by them prior to reference to the Arbitration ."

12. A perusal of the said discussion does not indicate as to how the Arbitrator has calculated the figure of Rs.14,58,89,484/-. Though the learned Counsel for the Respondent has made attempts to justify the said figure but as to how the Arbitrator has arrived at the figure of Rs.14,58,89,484/- is not discernible from the above discussion.

13. The Petitioner has partly accepted the award. The issue as to whether an award can partly be set aside or not has been discussed at length by a Coordinate Bench of this Court *vide* Judgment dated 21.08.2023 in National Highways Authority of India v. Trichy Thanjavur Expressway Limited,

O.M.P.(COMM) 95/2023, has observed as under:-

> *"**53.** As was rightly propounded in Alcon Builders, the injunct of modification as enunciated in M. Hakeem would only apply where the Court were to consider rendering its own decision or substituting its own view over that of the Arbitrator on a particular claim. The learned Judge also rightly noticed a situation where a decision only on some parts of an award or counter claims may be laid before a Court. It was in that backdrop significantly observed that it would be wholly unnecessary for a court to set aside the award in its entirety even though the challenge itself may stand confined to certain parts thereof. In Alcon too the learned Judge propounded the principles of severability and claims not being inter-dependent so as to enable the Court to consider partially setting aside the award.* ***The views thus expressed in the aforesaid decision clearly commends acceptance and a power of partial setting aside being recognized to inhere in courts.*** *We have already found that Section 34(2)(a)(iv) cannot be construed as being indicative of the legislative intent for a partial setting aside power being available to be invoked only in cases that may fall within the ambit of that clause. In light of the foregoing discussion, we are of the firm opinion that the expression ―setting aside‖ as employed in Section 34 would include the power to annul a part of an award provided it is severable and does not impact or eclipse other components thereof."*
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> (emphasis supplied)

14. In view of the above, the matter is remanded back to the learned Arbitrator for fresh consideration of Issue No.11 which is regarding interest. The Arbitrator is directed to consider this issue and pass an award *qua* the amount of interest.

15. In view of the fact that the award was passed on 20.03.2023, the

learned Arbitrator is requested to expedite the hearing.

16. The petition is disposed of along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

MARCH 18, 2025
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