



2025:DHC:4296-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 20.05.2025

+ **FAO(OS) (COMM) 288/2022**

ORIENTAL INSURANCE COMPANY LIMITED

.....Appellant

Through: **Mr. Amandeep Singh, Mr.**
Pradeep Desodhya, Advs.

versus

APRIL USA ASSISTANCE INC

.....Respondent

Through: **Mr. Nakul Dewan, Sr. Adv.**
with Mr. Pradhuman Gohil, Ms.
Neelu Mohan, Ms. Taniya
Bansal, Ms. Atmaja Tripathi,
Ms. Gahena Gambhani, Advs.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MS. JUSTICE RENU BHATNAGAR

NAVIN CHAWLA, J. (Oral)

CM APPL. 47893/2022 (condonation of delay of 105 days in filing), CM APPL. 43980/2022(condonation of delay of 148 days in re-filing and CM APPL. 47983/2022 (placing additional documents)

1. The above applications have been filed, seeking condonation of delay in filing the appeal and re-filing of the appeal, and also for placing on the record additional documents in support of the plea of condonation.



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2. The appellant seeks condonation of delay in filing of the appeal primarily premised on the order dated 10.01.2022 passed by the Supreme Court in ***Cognizance for extension of limitation, In Re,*** (2022) 3 SCC 117.

3. As far as delay in re-filing is concerned, the appellant states that the counsel and other members of the office of the appellant suffered from the Covid, because of which there was a delay in curing the defects marked by the Registry in the appeal, resulting in the delay in re-filing the appeal. Documents in support of the same have been filed along with the application seeking leave to place on the record the additional documents.

4. The learned senior counsel appearing for the respondents opposes these applications by stating that though the impugned order was passed during the Covid period which is covered by the orders of the Supreme Court in ***Cognizance*** (supra), the appellant had continued appearing before the learned Single Judge in the enforcement proceeding, and that therefore, the benefit of the order passed by the Supreme Court should not be extended to the appellant. As far as the delay in re-filing is concerned, he submits that apart from stating that the learned counsel of the appellant and some of the other members of his office had suffered from the Covid, there is no sufficient/cogent reason given by the appellant for seeking condonation of the delay which of 105 days.

5. We have considered the submissions made by the learned counsel for the parties.



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6. By an order dated 10.01.2022, passed by the Supreme Court in **Cognizance** (*Supra*), the Supreme Court directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings. It was directed that in cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022, and in the event the actual balance period of limitation remaining with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.

7. As far as the plea of the learned senior counsel for the respondent that as the appellant was appearing in the enforcement proceedings, the appellant is not entitled to the benefit of the extension of period of limitation, the same is also liable to be rejected in view of the judgment of the Supreme Court in **Prakash Corporates v. Dee Vee Projects Limited**, (2022) 5 SCC 112, wherein the Supreme Court had rejected a similar submission.

8. In the present appeal, the appellant impugns the order dated 28.10.2021 passed by the learned Single Judge. The order was, therefore, passed during the period which has to be excluded for purposes of limitation. The appeal has been filed by the appellant on 11.04.2022. Therefore, the appeal filed by the appellant cannot be stated to be barred by the limitation.

9. As far as the delay in re-filing of the appeal is concerned, the



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appellant has placed on record the medical certificates showing that the learned counsel for the appellant and some of the members of his office, had suffered from Covid. Those were testing times and therefore, only for delay in refilling, we would not like to deny the appellant an opportunity of pressing its case in appeal on merit. The delay in re-filing is, accordingly, condoned.

10. The applications are allowed in the above terms.

FAO(OS) (COMM) 288/2022 and CM APPL. 47077/2022

11. This appeal has been filed challenging the order dated 28.10.2021 passed by the learned Single Judge of this Court in O.M.P. (COMM)14/2020, titled ***Oriental Insurance Company Limited vs. April USA Assistance Inc.***, dismissing the application filed by the appellant under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act').

12. The above application, that is O.M.P. (COMM)14/2020, had been filed by the appellant challenging the arbitral award dated 15.09.2021 passed by the learned Sole Arbitrator adjudicating the disputes that had arisen between the parties in relation to three agreements, which are stated as under:

“ (a) Service Provider Agreement dated 15.03.2007 entered into between Coris S.A., the Respondent and an Indian company by the name of M/s Heritage Health TPA Private Limited (the "2007 Agreement");

(b) Service Provider Agreement dated 29.06.2009 between Coris S.A., the Respondent and an Indian company by the name of M/s Heritage Health TPA Private Limited (the "2009 Agreement"); and;



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(c) Service Provider Agreement dated 31.05.2012 entered into between Coris S.A, the Respondent and an Indian company by the name of M/s Heritage Health TPA Private Limited (the "2012 Agreement")."

13. The dispute between the parties inter alia was on the interpretation to be placed to Clause 1.1.6 of the agreements which defines the term "fees" as to be payable as percentage of the "*Annual Audited Premium booked by the insurer on the OMP (s) and or any other Health Insurance Policies issued for the benefit of Indian going Aboard*". Admittedly, the term "*Annual Audited Premium*" was not defined in the agreements.

14. The learned Sole Arbitrator, therefore, considered various other terms of the agreements, and held that the term "*Annual Audited Premium*" refers to the standard premium rates. We quote from the award as under:

"13.3.3. A reading of the above would show that the payment of Fees and also of Annual Bonus is based on the 'annual audited premium' for the OMP issue period. Pertinently, the phrase 'annual audited premium' has not been specifically defined in the Agreements.

13.3.4. In deciding as to what would be true scope of the phrase 'annual audited premium', reference may be made to the various definitions mentioned above. The definition of an Insured Person in Clause 1.1.10, that of Policy in Clause 1.1.14, Policy Holder in Clause 1.1.15, and Services in Clause 1.1.16 leads to the conclusion that the policies which were required to be Serviced would be policies that were issued to individual insured persons.

13.3.5. The definition of Policy at Clause 1.1.14 and Policy Holder at Clause 1.1.15, in particular, requires that the OMP is issued to Indians going abroad and the Policy Holder is the customer of the insurer who has paid premium. These definitions do not appear to support



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issuance of group OMPs by the insurer. It is apparent from Clause 1.1.10 that an OMP is to be issued in the name of an Insured Person, who is entitled to benefits under a valid OMP. The Agreements, do not, in any way suggest that an Insured Person or the Policy Holder would be a group. This indicates that the Policy Holder would necessarily be an individual insured person. In this light, the phrase annual audited premium in Clause 3.2.1. would, in the Tribunal's view, be attracted only in respect of policies issued to individual insured persons alone, for which the Claimant would require to be paid, at what it describes, as standard premium rates.

13.3.6. The phrase annual audited premium not having been defined, there is scope for an ambiguity in the Agreements. Therefore, apart from the definition provisions of the Agreements which indicate the true and correct interpretation of Clause 3, reading the Agreement as a whole, it would be open to the Tribunal to look into the surrounding circumstances and conduct of the parties for ascertaining the intention of the parties, subject to the limitation placed by Section 92 of the Evidence Act, 1872 (*Kaliaperumal v. Rajagopal & Anr.* (2009) 4 SCC 193 at paragraph 19).

13.3.7. The Tribunal is conscious that the Agreements contain an Entire Agreement clause, being Clause 12, which reads as under:

"Clause 12: Entire Agreement

This Agreement entered between the Insurer and the OSP represents the entire Agreement between the Parties and shall supersede any previous Agreement or understanding between the Parties in relation to matters covered hereby. In the event of a conflict between the provisions of the Agreement and any previous Agreement or understanding, the provisions of this Agreement shall prevail."

13.3.8. However, such clause does not prevent the Tribunal from looking into the surrounding circumstances in the event of ambiguity. The clause is intended to exclude any evidence or argument to the effect that the terms of the contract are to include any mutual



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understanding that is not recorded in the contract. It is not intended to exclude admissible evidence, or argument about the way in which parties exercise rights given to them by the terms of the contract.

13.3.9. For this limited purpose, the Tribunal has looked at the context with a view to understand the text of the three Agreements. [Sumitomo Heavy Industries Ltd. v. ONGC Ltd. (2010) 11 SCC 296] The tender was floated by GIPSA on behalf of all the four public sector insurance companies. The tender requirements, on the basis of which the bid was submitted, set out certain premium figures as well as Claim figures which were based on rates of insurance premiums for individual insured persons. The sample policy, which is incidentally of the Respondent company, itself also suggested that it was in respect of an individual policy holder. This broad commercial understanding also supports the interpretation arrived at by the Tribunal on a construction of the various clauses of the Agreements read as a whole. The Tribunal reiterates that the reference to the figures in the tender and the sample policy are merely to understand the commercial context and that the Tribunal has reached its conclusion on the basis of true and proper construction of the relevant clauses of the Agreements.

13.3.10. In these circumstances, the Tribunal accepts the Claimant's submission that the true and correct interpretation of the phrase "annual audited premium" would be the annual audited premium recovered from individual policy holders, which the Claimant has characterised as standard premium rates, and not the premium recovered under a Group Medical Policy."

15. Aggrieved of the above award, the appellant filed the above application under Section 34 of the Act, contending therein that the learned Sole Arbitrator has, in fact, proceeded to re-write the agreement between the parties. It was contended that the “*annual audited premium*” can only be the premium which has been reflected in the books of accounts of the appellant.



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16. The learned Single Judge, however, applying the principles and restrictions on the powers of the Court under Section 34 of the Arbitration and Conciliation Act, 1996 ('Act'), wherein the question of the interpretation of a contract has to be left to the Arbitral Tribunal, rejected the challenge of the appellant to the arbitral award.

17. The learned counsel for the appellant reiterates that the term "*annual audited premium*" has to be read as quantum of the premium recorded in the audited books of account of the appellant. He submits that the learned Arbitrator has re-written the agreement between the parties, terming it as an interpretation of the agreements. He submits that the said interpretation is completely perverse and the award therefore was liable to set aside. He submits that there is no such term as a "*standard premium rate*" in the contract.

18. On the other hand, the learned senior counsel for the respondent supports the impugned order by contending that the learned Single Judge has rightly held that the interpretation of the contract is the domain of the learned Sole Arbitrator, and that the Court while exercising powers under Section 34 of the Act, would not interfere with the same.

19. We have considered the submissions made by the learned counsel for the parties.

20. As is evident from the above, the learned Sole Arbitrator has considered the various clauses of the agreements and the surroundings



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circumstances, to conclude that the term “*annual audited premium*”, though not defined in the agreements, has to mean the standard premium rates. This is an interpretation placed by the learned Sole Arbitrator on the terms of the agreement, which can neither be said to be perverse or so unreasonable that no person could have arrived at the same. It also cannot be said to be a re-writing of the terms of the agreement between the parties.

21. The law on the powers of a Court under Section 34 of the Act to interfere with the interpretation of the contractual terms by the learned Arbitral Tribunal is now too well settled to be re-visited by this Court. The power of this Court under Section 37 of the Act, if not more restrictive than the power of a Court under Section 34 of the Act is at least *pari material* thereto. Reliance to this effect can be placed on the Judgement of this Court on the Judgements of the Supreme Court in ***UHL Power Company Ltd. vs. State of Himachal Pradesh***, (2022) 4 SCC 116, and ***Konkan Railway Corpn. Ltd. vs. Chenab Bridge Project***, (2023) 9 SCC 85. This Court also therefore, cannot re-visit the interpretation placed by the learned Arbitral Tribunal on the terms of the agreement between the parties unless such interpretation is found to be completely perverse or amounting to a re-writing of the agreements. In the present case, we do not find the appellant could have met the said threshold of interference.



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22. Accordingly, we do not find any merit in the present appeal.
The same is dismissed.

NAVIN CHAWLA, J

RENU BHATNAGAR, J

MAY 20, 2025

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Click here to check corrigendum, if any