



WEB COPY



Arb.O.P.(Com.Div.) No.223 of 2022

In the High Court of Judicature at Madras

Dated: 03.2.2026

Coram :

The Honourable Mr.Justice N.ANAND VENKATESH

Arbitration O.P.(Com.Div) No.223 of 2022

The New India Assurance Co.Ltd.,
rep.by its Regional Manager,
having its office in Mumbai and
its Chennai Regional Office at
770-A, "Dewa Towers", III Floor,
Anna Salai, Chennai-2.

...Petitioner

Vs

M/s.Rajkumar Impex Private
Ltd., rep.by its Authorized
Signatory Mr.Sahir Basha
having its present address at
GS Towers, III Floor,
Old No.116, New No.24,
Abhiramapuram 4th Street,
Chennai-18.

...Respondent

PETITION under Section 34(2) of the Arbitration and Conciliation Act, 1996 praying to set aside the award dated 23.10.2021 received on 27.10.2021 and the Section 33 Application dated 22.11.2021 disposed on 14.12.2021 and received on 16.12.2021 made by the Arbitral Tribunal.

For Petitioner	:	Mr.S.R.Sundar
For Respondent	:	Mr.V.Raghavachari, SC for M/s.Sampathkumar & Associates



Arb.O.P.(Com.Div.) No.223 of 2022

ORDER

WEB COPY

This petition has been filed under Section 34(2) of the Arbitration and Conciliation Act, 1996 (for short, the Act) seeking to set aside the award dated 23.10.2021 passed by the Arbitral Tribunal and the further clarification given vide order dated 14.12.2021.

2. Heard both.

3. The case of the petitioner is as follows:

(a) The petitioner is an Insurer. The respondent is the claimant, which is a processor and exporter of cashew nuts, before the Arbitral Tribunal. The dispute arose out of the repudiation and settlement of claims under three insurance policies issued by the petitioner.

(b) The salient features of the insurance policies are as follows:

(i) A Fire Floater Declaration Policy bearing No. 701080211150400000002 covering stocks of Raw Cashew Nuts (RCNs), finished/semi-finished goods and packing materials at multiple locations, including the insured premises situated at Kumaragiri Village, Thattaparai Vilaku, Pudukottai Post, Tuticorin for a floater sum insured of Rs.140,10,00,000/- valid for the period from 22.6.2015 to



Arb.O.P.(Com.Div.) No.223 of 2022

21.6.2016;

WEB COPY

(ii) A Standard Fire and Special Perils Policy bearing No. 71080311150100000113 covering stock of cashew nuts in process at six locations, including the said premises for a sum insured of Rs.15 Crores valid for the period from 22.6.2015 to 21.6.2016; and

(iii) A Standard Fire and Special Perils Policy bearing No. 71080311140100000419 covering the building, plant and machinery and furniture and fixtures at Pudukottai premises for a sum insured of Rs.8,25,50,000/- valid for the period from 29.11.2014 to 28.11.2015.

(c) On 22.11.2015, catastrophic floods caused extensive damage to the insured stock of RCNs, machinery, office furniture and the compound wall at the respondent/claimant's godowns in Kumaragiri Village, Thattaparai Vilaku, Pudukottai, Tuticorin. The respondent reported the loss immediately. The Insurer appointed one Mr.Basheer of M/s.J.Basheer & Associates as the Surveyor. The Surveyor inspected the site on 25.11.2015 and advised mitigative measures including drying the water-soaked RCNs.

(d) Pursuant to the inspection, the Surveyor submitted an interim survey report dated 19.1.2016 recommending an "on account" payment of Rs.2 Crores. Acting thereon, the Insurer released an



Arb.O.P.(Com.Div.) No.223 of 2022

interim payment of Rs.1.5 Crores on 07.6.2016.

WEB COPY

(e) Thereafter, a dispute arose between the parties with regard to the methodology for assessment of loss in respect of the damaged RCN. The respondent/claimant contended that the flood damage had rendered further processing commercially unviable owing to deterioration in yield and quality and accordingly sought to treat the entire stock as a total loss. On the other hand, the Insurer contended that the stock, once dried, remained processable.

(f) In order to resolve the said dispute, a joint sample processing exercise was conducted between 05.5.2016 and 08.5.2016. The kernels obtained from the said exercise were forwarded for analysis to the King's Institute, Guindy, which certified that the kernels were fit for human consumption and complied with the prescribed food safety standards.

(g) Simultaneously, for the purpose of determining the value at risk and examining the issue of under-insurance, the Surveyor appointed one M/s.RDV Associates, Chartered Accountants on 22.3.2016. The report submitted by the said Chartered Accountant Firm on 10.5.2017, which formed part of the Surveyor's final assessment, highlighted several discrepancies and deficiencies in the



Arb.O.P.(Com.Div.) No.223 of 2022

respondent/claimant's books of accounts.

WEB COPY

(h) After prolonged correspondence and upon obtaining belated approval from the Surveyor, the respondent/claimant disposed of the entire quantity of damaged raw cashew nuts as salvage during the period from 12.11.2016 to 15.3.2017 for a total value of Rs.5,61,19,491/-.

(i) The Surveyor submitted his final survey report on 29.10.2018, initially assessing the net payable loss at Rs.3,21,60,954/-, which was subsequently revised to Rs.2,69,97,327/-. However, the Insurer's Regional Office undertook a substantial downward revision and by communication dated 27.3.2019, made a final settlement offer of only Rs.70,75,505/-. The said offer was premised on (i) applying a "market impact" deduction of Rs.47.20 lakhs to the assessed value of the stock, (ii) disallowing 75% of the assessed repair costs relating to machinery and furniture and fixtures for want of original bills and documents required for assessing the value at risk, and (iii) rejecting in entirety the claim relating to the repair of the compound wall.

(j) Aggrieved by the aforesaid settlement, the respondent/claimant invoked arbitration clause on 14.8.2019 and thereafter, the



Arb.O.P.(Com.Div.) No.223 of 2022

WEB COPY

Arbitral Tribunal was constituted.

(k) Before the Arbitral Tribunal, the respondent/claimant filed a claim statement and sought for payment of a sum of Rs.22,77,37,044/- along with interest.

(l) Before the Arbitral Tribunal, the petitioner raised a preliminary objection to the effect that the respondent/claimant was not legally entitled to recover this loss since the entire business along with assets and liabilities stood transferred in the name of one M/s.Rajkumar Cashew India Private Limited and that therefore, the respondent/claimant was not entitled to recover the loss from the petitioner. The further defence taken by the petitioner was that whatever amount was due and payable to the respondent/claimant had already been settled and that the respondent/claimant was not entitled for payment of any other amount as claimed by them.

(m) The Arbitral Tribunal framed the following issues:

"1 (i) Whether the Claimant (RIPL) is legally entitled to recover this loss from the Respondent as of now ? and

(ii) Whether this arbitration was initiated by the Claimant through person/s duly authorized by its Board of Directors?

2. Whether the Compound Wall of the



WEB COPY



Arb.O.P.(Com.Div.) No.223 of 2022

insured premises was covered under the policy and the Respondent is liable to pay for its loss or damage?

3. Whether the assessment and quantification of the Claimant's loss by the surveyor Mr.J.Basheer & Associates Surveyor Pvt. Ltd. were, fair, just and in accordance with the terms of policy?

4. Whether the Claimant acted with prudence and transparency in disposing the damaged RCNs as salvage for the best possible price?

5. What is the amount for which the Respondent is liable under the policy in respect of this loss as against the Claimant's claim of Rs.23,27,37,044/-? And

6. Any other reliefs the parties are entitled to?"

(n) The Arbitral Tribunal, on considering the pleadings and the evidence available on record, passed the following award:

"(a) Rs.7,77,12,349/- (Rupees seven crores seventy seven lakhs twelve thousand three hundred and forty nine only) being amount awarded to Claimant in settlement of this claim in dispute;

(b) Simple interest @ 9% p.a. on the amount awarded towards settlement of the claim as per (a) above from 29th November 2018 upto



Arb.O.P.(Com.Div.) No.223 of 2022

the date of this award;

(c) A further Interest (simple) @ 9% p.a. on the belated "On Account" payment of Rs.1,50,00,000/- from 27th January 2016 to 7th June 2016;

(d) Simple interest at the rate of 9% on the entire amount awarded under (a) to (c) above from the date of the Award to the date of payment as per Sec 31(7)(b) of the Arbitration Act; and

(e) In case the Respondent fails to satisfy this Award within 30 days from the date of this Award, it shall become liable to pay 12% simple interest under (d) above instead of 9%."

(o) After the award dated 23.10.2021 was passed, the petitioner filed a petition before the Arbitral Tribunal under Section 33 of the Act seeking certain clarifications and it was also disposed of by order dated 14.12.2021 reiterating the award dated 23.10.2021.

(p) Aggrieved by the award dated 23.10.2021 passed by the Arbitral Tribunal and the order dated 14.12.2021, the above petition has been filed before this Court under Section 34 of the Act.

4. When this petition came up for hearing on 06.1.2026, this Court passed the following order:

"The Insurance Company has filed this



WEB COPY



Arb.O.P.(Com.Div.) No.223 of 2022

petition challenging the award passed by the Three Member Arbitral Tribunal dated 23.10.2021.

2. Heard learned counsel appearing on either side.

3. Even though various submissions were made touching upon the manner in which the proceedings were conducted before the Arbitral Tribunal and also certain issues touching upon the merits of the claim, an important and fundamental question was raised on the side of the petitioner, which touches upon the very locus standi of the respondent company to proceed with the claim.

4. Learned counsel for petitioner contended that the preliminary objection was raised by petitioner on the ground that the respondent/ claimant had already sold their business, assets and liabilities to another corporate entity, viz., M/s.Rajkumar Cashew India Pvt. Ltd. through a Business Transfer Agreement dated 14.07.2016. In that agreement, apart from Assignment of accounts receivable in favour of the new entity, there was also transfer of insurance policy in favour of the new entity and to substantiate the same, learned counsel relied upon Clauses 6.3 and 6.6 of the Business Transfer Agreement dated 14.07.2016. Learned counsel submitted that this agreement formed part of the report of the Surveyor dated 29.10.2018. In view of the same, the petitioner raised the preliminary objection on the continuance



WEB COPY



Arb.O.P.(Com.Div.) No.223 of 2022

of the proceedings by the respondent/claimant.

5. Learned counsel for petitioner further brought to the notice of this Court the Minutes of the Arbitral Proceedings of the Arbitral Tribunal held on 10.10.2020 where preliminary issued was raised before the Tribunal. For proper appreciation, paragraph Nos.4, 5 and 6 of the Minutes of the Arbitral Proceedings are extracted hereunder:

'4.Redundancy of Documents demanded by Respondents from the claimant:

The respondent and its Advocate have been persistently demanding submission by the Claimant of the following documents from the latter's corporate records:

(1) Board resolution for the existence of the claimant and authorisation of the claimant's representative to file the claim settlement.

(2) Existence of Directors and shareholding pattern.

(3) Balance sheet for the last Five years.

(4) Charges on the Financial Institution and Banks created on its assets.

(5) Consolidated financial statements for the last 5 years.

(6) Consolidated financial statement of the associated company for the last three years.

(7) Consolidated financial statement of Subsidiary companies for last three years.

(8) List of charges created with concerned



WEB COPY



Arb.O.P.(Com.Div.) No.223 of 2022

ROC.

(9) Form 32/DIR 12 for last three years and list of present Directors.

(10) Annual Returns, Form 20 B/MGT7 shareholding pattern.

(11) Minutes book of Directors meeting and minutes book of members meeting for last three years.

The first document specified in the above viz. Certified copy of the Board resolution of M/s.Rajkumar Impex Pvt. Ltd. has been submitted by the advocate of the claimant recently.

All the other items mentioned above are not relevant to the present Arbitration proceedings. The Tribunal does not understand why the Respondent requires the financial statements of subsidiary companies, associated companies and its own Balance sheet for five years. Why should the claimant part with the financial statements of associate companies and subsidiary companies to the Tribunal? Similarly, the minutes book of the Board meetings and also members meetings are supposed to be confidential documents and the Tribunal does not think that it has any authority to ask for those documents which in its opinion are not relevant to the claim or the present Arbitration proceedings.

5. Respondent's Plea for decision on a Preliminary Issue first before Trial:



WEB COPY



Arb.O.P.(Com.Div.) No.223 of 2022

The corporate records of the Claimant show that its Business and Assets and Liabilities stand sold to another corporate entity named M/s.Rajkumar Cashew Pvt. Ltd. As on date. The Respondent, having admitted its liability to pay this claim to the insured M/s.Rajkumar Impex Pvt. Ltd., has raised two issues with respect to this arbitration proceedings:

1. Having sold its Business, Assets and Liabilities to another corporate entity, whether the Claimant, M/s.Rajkumar Impex Pvt. Ltd. has any legal right to enforce its claim under the policy now through arbitration and

2. Whether the person Mr.Sahir Basha who has initiated this arbitration proceedings on behalf of M/s.Rajkumar Impex has been properly authorised by that company to do so as per law.

The Respondent has vigorously contended that since the resolution of these two issues is sine qua non for deciding about the maintainability of this arbitration, these issues have to be taken up as Preliminary Issues and decided by the Tribunal before commencing the trial.

The Respondent's counsel also insisted that a few more corporate records of the Claimant company more particularly the Minutes of the Board of Directors' Meeting authorising Mr.Sahir Basha to initiate this arbitration be placed before the Tribunal.



WEB COPY



Arb.O.P.(Com.Div.) No.223 of 2022

After hearing the elaborate arguments made by the learned counsels of both sides on the subject, the Tribunal observed as under:

1. Both above issues sought to be tried as preliminary issues by the Respondent involve mixed questions of fact and law and the facts associated with those issues required to be testified. Therefore, they cannot be tried and decided in isolation at this stage but can only be dealt with during the trial along with all other issues arising in this dispute. The decision in respect of all the issues would be given by the Tribunal in its Final Award.

2. The Tribunal would not force the Claimant to submit all the documents that the Respondent fell important for its case. The Claimant would submit documents that it considered necessary to support its case and if it was not able to prove its case with the documents it submitted, it is for it to suffer the adverse outcome.

3. The question of passing any interim award for release of claim amount already offered by the Respondent does not arise in view of the Claimant's decision not to pursue its Sec 17 Application in this regard.

It was then agreed to by the parties that the Tribunal may frame the issues including the issues suggested by the Respondent as preliminary issues and proceed with the trial straight away.



WEB COPY



Arb.O.P.(Com.Div.) No.223 of 2022

6. Issues Framed:

After carefully examining the various pleadings of the parties and after hearing the arguments of the counsels of both sides as to the relevance and applicability of the Draft issues submitted by each of them, the Tribunal framed the following issues for adjudication of this dispute:

1. Whether the Claimant is legally entitled to recover this loss from the Respondent as of now and whether this arbitration was initiated by the Claimant through person/s duly authorized by its Board of Directors?

2. Whether the Compound Wall of the insured premises was covered under the policy and the Respondent is liable to pay for its loss or damage?

3. Whether the assessment and quantification of the Claimant's loss by the Surveyor Mr.J.Basheer of M/s.J.Basheer & Associates Surveyors Pvt.Ltd., were fair, just and in accordance with the terms of policy?

4. Whether the Claimant acted with prudence and transparency in disposing the damaged RCNs as salvage for the best possible price?

5. What is the amount for which the Respondent is liable under the policy in respect of this loss as against the Claimant's claim of Rs.23,27,37,044/-.



WEB COPY



Arb.O.P.(Com.Div.) No.223 of 2022

6. Any other reliefs the parties are entitled to.

These issues are taken on record with the concurrence of both the parties.'

6. Learned counsel for petitioner submitted that the Arbitral Tribunal ought to have dealt with the preliminary objection raised by the petitioner since it touches upon the very locus standi of respondent/ claimant to proceed further with the claim. However, the Arbitral Tribunal thought it fit to frame an issue, which will be decided after completion of trial.

7. Learned counsel for petitioner further relied upon Section 42-A of the Arbitration and Conciliation Act, 1996 and submitted that insofar as the proceedings before the Tribunal is concerned, the issue of confidentiality can never be put against any party, whereas, when the petitioner had sought for certain documents, which would have established as to whether the respondent/claimant had locus standi to proceed further with the claim, the Tribunal had brushed it aside on the ground that Minutes Books of the Board Meetings and also the Members Meetings must be considered to be confidential documents and therefore, they can never be summoned before the Tribunal.

8. Learned counsel for petitioner took this Court to the finding rendered by the Arbitral



WEB COPY



Arb.O.P.(Com.Div.) No.223 of 2022

Tribunal insofar as the preliminary objection raised by the petitioner. Learned counsel submitted that the Tribunal did not even take into consideration the Business Transfer Agreement dated 14.07.2016, which specifically dealt with the transfer of the insurance policy and other accounts receivable in favour of the new entity and came to an erroneous finding that the benefit under the policies is continued in favour of the respondent/claimant. Learned counsel also submitted that the burden of proof was on the respondent/claimant to establish that the respondent company is entitled to continue to prosecute the insurance claims, whereas, the Tribunal took upon itself the said exercise and unilaterally had verified the website of the Ministry of the Corporate Affairs and concluded that the respondent company continues to be in existence. Learned counsel submitted that if any such material is relied upon by the Arbitral Tribunal, it should have been brought to the notice of the petitioner since the petitioner must be given an opportunity to deny the material relied upon by the Tribunal. Apart from that, the burden of proof which is supposed to be discharged by a party cannot be filled up by the Tribunal by fulfilling that requirement in favour of the party. Hence, it was contended that the findings of the Tribunal suffers from perversity and patent illegality.



WEB COPY



Arb.O.P.(Com.Div.) No.223 of 2022

9. *The issue raised by learned counsel for petitioner goes to the root of the matter and it touches upon the very locus standi of the respondent/claimant to maintain the claim against the Insurance Company. Prima facie, the materials placed before this Court, more particularly, the Business Transfer Agreement dated 14.07.2016 makes it clear that there was, in fact, Assignment of accounts receivable in favour of the new entity viz., Raj Kumar Cashew India Pvt. Ltd. and the insurance policies were also transferred in favour of the said new entity since it forms part of the accounts receivable. Apart from that, the new entity viz., Raj Kumar Cashew India Pvt. Ltd. had further merged with a German Firm as on 01.10.2016 and a cancelled cheque of the new company was also received from the representative of the company on 12.10.2018. These particulars forms part of the survey report dated 29.10.2018. Under such circumstances, unless and otherwise the respondent/claimant has discharged their burden of proof to establish that the respondent can independently function as an entity and they can also prosecute the claim against the Insurance Company, no useful purpose will be served in going into the other issues on merits. If ultimately, the respondent/claimant has not discharged the burden, all the other claims will have to crumble like a pack of cards.*



WEB COPY



Arb.O.P.(Com.Div.) No.223 of 2022

10. Learned counsel for respondent/claimant has to necessarily satisfy this Court on the preliminary objection raised, which according to this Court has not been properly considered by the Tribunal. If the respondent/claimant is not able to cross this obstacle, dealing with all the other issues will only be a futile academic exercise.

Post this petition under the caption 'for orders' on 08.01.2026."

5. This petition was once again listed for hearing on 20.1.2026, on which date, the following order was passed by this Court:

"Pursuant to the earlier order, the respondent has filed the Business Transfer Agreement with all schedules, dated 14.07.2016. A copy has been served on learned counsel for petitioner.

2. Learned counsel for petitioner, by placing reliance upon Clauses 2.5(i) (k) and (n) and 6.6 and Schedule 6 of the Business Transfer Agreement, submitted that the stand taken by the petitioner, which was recorded by this Court, further stands confirmed.

3. Learned counsel for petitioner, by pointing out to Page No.13 of the Award, submitted that the Tribunal has given a finding as if the Tribunal had the advantage of looking into the agreement and



WEB COPY



Arb.O.P.(Com.Div.) No.223 of 2022

its schedule, whereas, the schedule was not provided to the Surveyor in spite of a specific request made and the schedule did not form part of the documents filed by respondent before the Tribunal. To substantiate the same, learned counsel relied upon the admission and denial of documents dated 20.02.2020 and also the e-mail sent by the Surveyor on 16.01.2026.

4. Learned counsel for respondent submitted that he is led by a Senior Counsel.

Post this petition on 27.01.2026 at 02.15 p.m. under the caption 'Part-Heard Cases'."

6. Mr.V.Raghavachari, learned Senior Counsel appearing on behalf of the respondent submitted that as per the business transfer agreement dated 14.7.2016, admittedly, three policies that were covered in the present case were not transferred and that this was evident on a reading of Clauses 2.5(i) and 6.6 read with Schedule 13. He also submitted that the Arbitral Tribunal properly applied its mind and rendered a categorical finding that the respondent/claimant had neither transferred the policies nor had transferred the right to receive the compensation in favour of the said M/s.Rajkumar Cashew India Private Limited, that the said finding was rendered by relying upon the relevant materials and by assigning proper reasons and that the same



Arb.O.P.(Com.Div.) No.223 of 2022

is not liable to be interfered by this Court. He further submitted that the preliminary objection raised by the petitioner as if the respondent/claimant did not have the right to make the claim for payment of compensation is liable to be rejected by this Court and that the above petition must be heard on merits.

7. On considering the submissions of the learned counsel on either side, this Court informed the learned counsel on either side that the preliminary objection will be dealt with at the outset and that depending upon the decision taken, hearing the case on merits will follow.

8. The Arbitral Tribunal rendered a finding that neither the benefit under the policies covered in this case nor the right to receive the compensation was alienated/transferred to the said M/s.Rajkumar Cashew India Private Limited. To come to this conclusion, the Arbitral Tribunal placed reliance upon the company master data available with the Ministry of Corporate Affairs and a finding has been rendered as if the respondent/claimant company continued to exist as a legal entity. A further finding has been rendered to the effect that the policies



Arb.O.P.(Com.Div.) No.223 of 2022

authorized Axis Bank to receive the full settlement from the Insurer, that this bank confirmed that the credit availed by the respondent/claimant had been repaid in full, that there were no outstanding and that the respondent/claimant had been discharged from all the mortgage obligations and consequently, the entitlement of the respondent/claimant to receive the policy benefits as a sole beneficiary had been restored.

9. It is not in dispute that the three policies pertained to the period from 29.11.2014 to 21.6.2016. Therefore, by the time the business transfer agreement was entered into between the respondent/claimant and the said M/s.Rajkumar Cashew India Private Limited on 14.7.2016, none of these policies was in subsistence. In view of the same, there was no occasion for transferring these policies to the new entity namely the said M/s.Rajkumar Cashew India Private Limited. Hence, under Schedule 13 read with Clause 6.6.1 of the agreement, there was no mention about the three policies, which are the subject matter of the present case.



Arb.O.P.(Com.Div.) No.223 of 2022

WEB COPY

10. Right from the beginning, the petitioner was questioning the locus standi of the respondent/claimant to make their claim under the insurance policies. For this purpose, the petitioner was insisting the respondent/claimant to produce certain documents, which would have established the status of the claimant as an independent entity to seek for the claim of compensation in spite of the transfer of entire business along with all receivables in favour of the said M/s.Rajkumar Cashew India Private Limited. The respondent/claimant resisted from producing any documents and unfortunately, the Arbitral Tribunal rendered a finding that calling for the minute book of the Board meetings and also the meeting of the Members would result in calling for confidential documents and therefore, the Arbitral Tribunal refused to summon any of those documents.

11. In fact, during the cross examination of C.W.2, he gave a categoric answer that he did not have in his possession any Board's resolution authorizing him to initiate and conduct the proceedings.

12. However, the Arbitral Tribunal rendered an arbitrary finding that in spite of such an answer given by C.W.2, it did not rule out the



Arb.O.P.(Com.Div.) No.223 of 2022

existence of any other resolution of the Board granting them to institute or defend any legal action. Such a finding rendered is bereft of any materials and it is a finding on mere surmises and conjectures.

13. The Arbitral Tribunal unilaterally verified the website of the Ministry of Corporate Affairs and came to the conclusion that the respondent/claimant company was in existence. If any such material is relied upon by the Arbitral Tribunal, necessarily the parties will have to be put on notice. In the absence of the same, it will violate Section 18 of the Act. Apart from the above, the Arbitral Tribunal rendered a finding as if the benefit under the policies continued in favour of the respondent/claimant and that therefore, the respondent/claimant had the locus standi to maintain the claim.

14. Clause 2.5(i) of the business transfer agreement dated 14.7.2016 reads as follows:

"2.5.

.....

(i) all the insurance policies obtained by the Seller in respect of the Business and the Transferred Assets which are currently in force and effect and that are set forth in Part A of Schedule



WEB COPY



Arb.O.P.(Com.Div.) No.223 of 2022

13 and all premia recoverable following the surrender/cancellation of the insurance policies set out in Part B of Schedule 13."

15. The above extracted clause must be read along with Schedule 13 since this schedule deals with all the insurance policies that were transferred to the new entity namely the said M/s.Rajkumar Cashew India Private Limited. Obviously, these three policies, which are the subject matter of the this case, would not have been transferred since the business transfer agreement itself was entered into only on 14.7.2016 and by then, the validity period of the three policies had come to an end.

16. The other relevant clause to be taken into consideration is Clause 6.6. For proper appreciation, the entire clause is extracted as hereunder:

"6.6. Transfer of Insurances:

6.6.1. The insurance policies, as set out in Schedule 13, shall be transferred/assigned/endorsed by the Seller in favour of the Purchaser along with the rights, benefits and obligations therein, by execution of such documents in an agreed form, by the Seller as may be required in



WEB COPY



Arb.O.P.(Com.Div.) No.223 of 2022

this regard, on and with effect from the Completion Date. The benefit of all the premiums paid by the Seller for the insurance policies till the Completion Date shall stand transferred/assigned by the Seller to the Purchaser on and with the effect from the Completion Date.

6.6.2. All claims by the Seller under the insurance policies which have been accepted by the insurer and which appear as Accounts Receivable as on the Completion Date, shall be transferred to the Purchaser as part of the transfer of the Business on and with the effect from the Completion Date. In the event the payment under any such claim is received by the Seller after the Completion Date, it shall forthwith transfer such amount to the Purchaser."

17. For the present case, Clause 6.6.2 assumes a lot of significance. Clause 6.6.2 makes it clear that in all those insurance policies, which have been accepted by the Insurer and where it appeared as accounts receivable as on the completion date, the same should be transferred to the new entity as a part of the transfer of business and with effect from the completion date. The completion date has been defined in the agreement itself as the date, on which, the parties achieved completion by obtaining necessary approvals in



Arb.O.P.(Com.Div.) No.223 of 2022

WEB COPY

relation to the transfer of business.

18. The business transfer agreement has taken effect from 14.7.2016 and on a careful reading of Clause 2, it is clear that it was a slump sale within the meaning of Section 2(42C) of the Income Tax Act, 1961. Once it is a slump sale, every other accounts receivable will stand transferred to the purchaser. The insurance policy amount that is receivable from the petitioner will also obviously stand transferred to the new entity. Under such circumstances, the burden of proof was upon the claimant to prove before the Arbitral Tribunal that they had the locus standi to prosecute the claim against the petitioner.

19. The Arbitral Tribunal has not assigned any proper reasoning as to how it came to the conclusion that the claimant was entitled to receive the policy benefit as the sole beneficiary. The finding rendered by the Arbitral Tribunal suffers from perversity and patent illegality.

20. It is quite surprising that the Arbitral Tribunal made an observation as if it had the advantage of looking into the agreement and the schedule whereas Schedule 13 was not even available before



Arb.O.P.(Com.Div.) No.223 of 2022

the Arbitral Tribunal. This is evident from the admission and the denial of documents dated 20.2.2020. If the schedule was not filed and did not form part of the copy of the agreement that was marked, either the Arbitral Tribunal had rendered such a finding even without looking into the relevant clause and the schedule or the Arbitral Tribunal had independently collected and looked into that schedule and in such a case, the petitioner was not put on notice.

21. In the case on hand, the locus standi of the respondent/claimant to maintain the claim against the petitioner was highly doubtful. As early as on 29.10.2018, the Surveyor had taken note of the same and this agreement formed part of the survey report. Thus, when the very locus of the respondent/claimant to maintain the claim petition has been disputed, the Arbitral Tribunal ought not to have brushed aside this issue so lightly as is apparent from the award passed by the Arbitral Tribunal.

22. Even before the award was passed, the petitioner was insisting for production of certain crucial documents to establish that the respondent/claimant, as an entity, was not entitled to make the



Arb.O.P.(Com.Div.) No.223 of 2022

claim and the Arbitral Tribunal, through proceedings dated 10.10.2020, refused to direct the respondent to produce those documents and also decided to deal with this issue after completion of the trial. On completion of the trial, the respondent/claimant did not produce the relevant documents and what was available was only the business transfer agreement dated 14.7.2016 and this agreement made it clear that all the accounts receivable were transferred in favour of the new entity namely the said M/s.Rajkumar Cashew India Private Limited. Under such circumstances, the respondent/claimant did not have the locus standi to maintain the claim petition. The findings rendered by the Arbitral Tribunal on this issue fall foul of Section 34(2A) of the Act. In the light of the above findings, it is not necessary for this Court to go into the other issues on merits.

23. In the result, the above original petition stands allowed and both the award dated 23.10.2021 and the order dated 14.12.2021 passed by the Arbitral Tribunal stand set aside. No costs.

03.2.2026

RS

28/30



WEB COPY



Arb.O.P.(Com.Div.) No.223 of 2022

N.ANAND VENKATESH,J

RS

P.D.ORDER in
Arb.O.P.(Com.Div.) No.223 of 2022

03.2.2026

29/30



WEB COPY



Arb.O.P.(Com.Div.) No.223 of 2022

Arb O.P(COM.DIV).No. 223 of 2022

N ANAND VENKATESH.,J

After the order was passed, it was brought to the notice of this Court by the learned counsel for the petitioner that a sum of Rs.2.25 Crores was deposited pursuant to the order passed by this Court on 10.08.2022, while the interim order was granted in favour of the petitioner. Since the main petition stands allowed, the petitioner is permitted to withdraw the amount along with accrued interest.

03.02.2026

2/2

kp